1196.

SUPREME COURT OF THE UNITED STATES.

No. 158.

THE UNITED STATES, APPELLANTS,

vs.

RUFFIN G. STIRLING.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR LOUISIANA.

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United States district court for the district of Louisiana.

Be it remembered, that on the 1st day of April, in the year of our Lord one thousand eight hundred and forty-six, Ruffin G. Stirling, by his attorney, T. G. Morgan, came into the said court, and filed the following petition, to wit:

To the honorable the judge of the district court of the United States in and for the district and State of Louisiana.

The petition of Ruffin G. Stirling, a citizen of the State of Louisiana, residing in the parish of West Feliciana, respectfully represents, that heretofore, to wit, on or about the thirteenth day of August, in the year seventeen hundred and eighty-seven, Don Estevan Miro, then governor of the province of Louisiana, did grant and concede in full right, unto one Claudio Trenonay, a certain tract of land containing sixteen hundred superficial arpens, situate in the now parish of West Feliciana aforesaid, bounded at the date of said grant on the north by lands of Guillo. Dunbart, west by the Bayou Sara, south by other lands of the said Trenonay, and east by vacant lands, as will more fully appear by reference to the plat of survey of said lands made by Carlos Trudeau, and by the original grant or patent issued and granted by the said Governor Miro to the said Trenonay, which will be exhibited on trial, or sooner if required—sheweth, that about or prior to the year eighteen hundred the said Trenonay sold the said land to one William Kirkland, then resid ing in the said parish of West Feliciana, and on the eighteenth day of May, in the year eighteen hundred and six the said William Kirkland sold and conveyed the same to one Moses Kirkland, and from the said Moses the same has been, through divers devises and sales, good and valid in law, conveyed to and now is the legal bona fide property of your petitioner; that the sale from the said Trenonay to said William Kirkland has been lost or mislaid, so that your petitioner has never been able to find the same. The remainder of the deraignement of title will be produced on trial. Your petitioner further represents, that he, and those under and through whom he claims, have been in the actual and peaceable possession of the said land from and before the date of the said grant to the said Trenonay, to wit, 3d August, 1787, until the present day, and that your petitioner is now in the actual possession thereof; and that there are not any persons living on or having possession thereof by a different title from that of your petitioner, or holding possession of any part thereof otherwise than by the leave or permission of petitioner. Your petitioner further represents, that either through ignorance or inadvertence of the former owners and possessors of the said tract of land, the grant or patent thereof has never been submitted to the examination of either of the tribunals which have been constituted by law for the adjustment of land titles in the present limits of the State of Louisiana, in consequence whereof the same has been or is liable to be reported as public land, liable to be sold by authority of the United States.

Wherefore, the premises being considered, your petitioner prays that, in pursuance of the act of Congress approved 26th May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," and of the act of Congress approved June 17th, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers," he may be authorized to institute this proceeding against the United States of America, to try the validity of his claim as hereinbefore set forth to the said tract of land; that due service of this petition and of citation be made on the district attorney of the United States for the district and State of Louisiana; and, after due investigation thereof, that it be ordered and decreed by your honorable court that your petitioner's claim and title to the said tract of land is good and valid against the United States of America.

And your petitioner prays for all such other and further relief in the premises as to justice and equity may appertain, and the law will allow. And your petitioner, &c., &c., by

(Signed) THOMAS GIBBES MORGAN, *his Solicitor.*

And on the second day of April, 1846, the following citation was issued from the clerk's office, to wit:

United States district court, sitting in and for the district of Louisiana, to the marshal for the district of Lousiana, or his lawful deputy, greeting:

You are hereby commanded to summon Salomon W. Downs, esq., United States district attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district of Louisiana, at a district court to be holden at New Orleans, on the first Monday of May, 1846, then and there to answer a petition in chancery filed against the United States, wherein Ruffin G. Stirling is the petitioner and the United States the respondent.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable T. H. McCaleb, judge, this second day of April, New Orleans, 1846, and the 70th year of American independence.

(signed) N. R. JENNINGS, *Clerk.*

[L. S.] By L. E. SIMONDS, *Dy. Clk.*

Mem.—The respondent is to enter an appearance in the above entitled cause, in the clerk's office, on or before the first Monday of May, 1846; otherwise the petition may be taken pro confesso.

Marshal's return.

Received this third day of April, 1846, and on the third day of April, 1846, served copies of the within citation, plaintiff's petition and docu-

ments annexed, on the within named S. W. Downs, esq., U. S. district attorney, by handing the same to him.

WM. F. WAGNER,
U. S. marshal.

(Signed) WM. E. WELLS,
U. S. dep'y marshal.

And on the 2d day of May, 1846, the following rule was entered on the minutes, to wit:

United States district court of Louisiana:

Saturday, May 2d, 1846.

Present, Hon. T. H. McCaleb.

R. G. STIRLING
vs.
THE UNITED STATES.

On motion of S. W. Downs, U. S. district attorney, it is ordered, that the petitioner produce and file in this cause the original titles from the Spanish government to the person under whom he claims, and all the mesne conveyances from him down to the present petitioner.

Copy—teste:

(Signed) L. E. SIMONDS, *D'y cl'k.*
For T. G. MORGAN. [L. S.]

M. R.

Received May 4th, 1846, and on the same day and month I served a copy of the within order on T. G. Morgan, esq., in person. Returned May 4th, 1846.

(Signed) WM. E. WELLS,
U. S. dep'y marshal.

And on the 4th day of May, 1846, the following entry was made on the minutes, to wit:

Monday, May 4, 1846.

Present, the Hon. T. H. McCaleb.

RUFFIN G. STIRLING
vs.
THE UNITED STATES.

Fixed, by consent of the respective counsel, for the 25th instant.

And on the 25th day of May, 1846, the following entry was made on the minutes, to wit:

Monday, May 25, 1846.

Present, the honorable T. H. McCaleb.

RUFFIN G. STIRLING
vs.
THE UNITED STATES.

This cause being called for trial, it is ordered, on motion of the United

States district attorney, that the same be continued till to-morrow, the 26th instant.

And on the 26th day of May, 1846, the United States district attorney came into the said court, and filed the following answer, to wit:

R. G. STERLING
vs.
THE UNITED STATES.

United States district court, district of Louisiana.

The defendants in this cause, by their attorney, S. W. Downs, for answer deny all and singular the facts and allegations in the plaintiff's petition contained, and will on the trial of the case require strict legal proof of the same.

Signed, S. W. DOWNS,
U. S. attorney, district of Louisiana.

And on the 26th day of May, 1846, the counsel for petitioner offered in evidence document marked A, which is in the words and figures following, to wit:

Señor Gov'or Grāl: Claudio Trenonay, vecino del puesta de la puenta cortada, con la mas profunda y devida veneracion, anteV. Sia., me presento y digo, que en el mes de henero, del año mil setecientos ochenta y tres, concediome V. Sia. una tierra en la margin irquierda del Rio Misissipi, en frente de mi habitacion situada en el dicho puesto, lindada a la fourche del Bayu de la Sara, y aun en el mes de Otubre, del año proximo pasado, la continuacion della de quarenta arpanes de frente, a empezar a la referida fourche, subiendo el bayo, con la profundidad ordinaria; pero siendo perdido el memorial, que mencionaba la dicha continuacion, he pedido a V. Sia., en el mes de Agosto ultimo, la gracia de reconcederme la expresada cantidad de tierra; aviendo presentado mi petition Don Nicolas Poydras, negociante del puesto de la punta cortada, á quien dixo V. Sia., que no se podia otorgar tanta tierra; por ese motivo he de merecer a V. Sia., se sirva dar me la continuacion de quantos arpanes de frente quitiére; en atencion a ser arenida y baxa mi tierra primeramente concedida, y no pudiendo aprovecharme, sino en cortando leña y algunos cypres; quando yo necesito suelo, aproprado para cultivar, y emplear á cincuenta negros a ese fin ya comprados, y adunde tambien he hecho travajos algunos en virtud del escrito perdido, que contenia mi ultima concesion. Este, Señor, será una gracia que estimulará al sup'te a adelantarla tanto al provecho de S. M. como al suyo propio por tanto.

A. V. S. Vendidamente suplico se sirva concederme la continuacion de mi tierra en el sobre dicho lugar, para emplear á los citados cincuenta negros, segun y como lleva lo expuerto, dixando todo á la favorable disposicion de su s'ia.

Signed, TRENONAY.

Nueva Orleans, 9 de Noviembre, de 1786.

El agrimensor de esta provincia, Don Carlos Labeau Trudeau, establecera este parte sobre los quarenta arpanes de tierra de frente con la profundidad ordinaria de quarenta, que solicito a empesar en la fourche subiendo el bayu de Sara, estando vacante, y no causado perjuicio, estenderá las diligencias de apeo que me remitira, para proveer al interesado del correspondiente titulo en forme.

Signed, ESTEVAN MIRO.

And further, on the 26th day of May, 1846, the counsel for the petitioner offered in evidence the translation of document "A," which is in the words and figures following, to wit:

To his EXCELLENCY *the Governor General:*

I, Claude Trenonay, of Pointe Coupée, with due respect beg leave to state to your excellency, that in the month of January of the year 1783, you granted me a certain piece of land, lying on the left bank of the river Mississippi, in front of my plantation at the place aforesaid, and contiguous to the fork of bayou Sara; that in the month of October of the said year, your excellency also granted to me the continuation of the aforesaid land, to wit, forty arpens front by the usual depth, commencing for said fork, and running up the aforesaid bayou. Having lost the document describing the said continuation and the concession which was made of it, I applied to your excellency in the month of August last for a new grant of the above described land, my petition was presented to your excellency by Nicholas Poydras, merchant of the said place of Pointe Coupée, to whom your excellency stated that he could not grant so much land.

Therefore, I now pray you will please grant me the continuation of as many arpens front as you may deem proper, begging you to take into consideration that the first land which you have conceded me being low and sandy, can be of no benefit to me, except to cut fire wood and some cypress thereon; that I require a soil proper for cultivation and employment for fifty negroes, which I have bought for that purpose; further, that I have made improvements on the land which I solicit, in virtue of the document which I have lost and which contained a grant to the land; if this favor should be granted, I shall exert myself to make improvements which will result to the benefit of his Majesty and mine. Therefore, I pray you will please grant me the continuation of the land at the aforesaid place, to give employment to the above mentioned fifty negroes, and for the reasons above stated. Relying on the well known benevolence of your excellency. TRENONAY.

New Orleans, 9th November, 1786.

The surveyor of this province, Don Carlos Laveau Trudeau, will establish the petitioner on the forty arpens of land front, by the ordinary depth of forty arpens, which he has applied for, commencing from the fork and up bayou Sara, if the land be vacant and it prejudice no one; the said surveyor will make out the operations of survey and remit them to me, in order to give the said petitioner a title in due form.

ESTEVAN MIRO.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked B, which is in the words and figures following, to wit:

[For map, see original.]

Don Carlos Trudeau, teniente grad'o de los r's ex's, agrimensor real y particular desta provincia de la Luisiana:

Certifico, que ha sido medido a favor de Don Clodio Trenonay, un terreno de quarenta arpanes de frente con el fondo reducido de quarenta arpanes, lo que completa mil seis cientos arpanes quadra de superficie, medida de la ciudad de Paris, segun el uso desta colonia, los limites son paralelos divigidos norte y sur con este y œste de la busola sin atender á la variacion, cuyo terreno dispuesto, en el distrito de punta cortada, en el bayu vulgaramente llamado de la Sara, lindado al norte con la tierra de Don Guill'o Dunbart, al sur con otra tierra *con otra tierra* del interesado, al oeste con la orilla izquierda del referido bayu, ya el este con tierra vacante y del dominio de su M., y fueron señalados para los terminos los arboles figurados en el plano que antecede, y para que conste doy la presenta certificacion, en conformidad del plano y certificacion del agrimensor Comm'o Don Guill'o Dunbart, con fecha del dia veinte Abril del corriente año, quedado en mis manos para ser agregado á la carta gen'l de aquel parage, el apeo abiendo sido praticado por decreto de su señ'a Don Estevan Miro, gov'r g'l, &c., con fecha del dia nueve de Noviembre, del año ultimo passado de mil setecientos ochenta y seis; de todo lo que doy fe en la ciudad de N'a Orleans, 13 Agosto de 1787 año. (Signed)

CARLOS TRUDEAU, *Ag'r*.

Don Estevan Miro, coronel de los reales exercitos, gobernador politico y militar de la provincia de la Luisiana, Movila, y Panzacola, é inspector de sus tropas, &a.

Vistas las antecedentes diligencias praticades par el agrimensor de esta provincia, Don Carlos Laveau Trudeau, sobre la posesion que ha dado a Don Claudio Trenonay, de mil y seis cientos arpanes de tierra quadra de superficie, situados en el distrito de punta cortada, sobre la orilla del bayu llamado vulgarm'te *Bayu de la Sara*, lindado de un lado á otra tierra del mismo Don Claudio Trenonay, y del otro á la de D'n Guillermo Dunbart, como lo demuestra el plano figurativo que antecede, y reconociendo estan regladem al orden de agrimensura, y a la concession de los ante d'hos circumvecinos, sin que á estos se les cause perjuicio alguno ni que lo hayan reclamado, y si bien consentido segun justifica su asistencia á d'han operaciones aprobandolan como las aprobamos, vs. ando de la facultad que el Reyno's tiene concedida otorgamos en su real nombre al suso dicho Don Claudio Trenonay, los referidos mil y seis cientos arpanes de tierra quadra de superficie, por que como suyos propios disponga de ellos, y los usufrute, reglandose a las mecionadas diligencias, y observando las condiciones prevenidas en el

reglamento del asunto. Dado, el presente firmado de mi mano, sellado con el sello de mi armas, y refrendado por el infra escripto secretario por S. M., de este gobierno en la Nueva Orleans, a trece de Agosto, de mil setecientos ochenta y siete.

[SEAL.] (Signed) ESTEVAN MIRO.
Por M'do de su S'ria.

Registrado.

(Signed) ANDRES LOPES ARMESTO.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence the translation of document B, which is in the words and figures following, to-wit:

[For map, see original.]

I, Don Carlos Trudeau, graduate lieutenant of the royal armies, royal and special surveyor of the province of Louisiana, &c., hereby certify, that there has been measured, in favor of Don Clodio Trenonay, a tract of land of forty arpents front by forty arpents in depth, forming sixteen hundred superficial square arpents, (by measurement of the city of Paris, agreeably to the agrarian custom of this province,) the boundary lines of which are parallel, running north and south by east and west, by the compass, without regard to its variation. This tract is situated in the district of Pointe Coupée, on the bayou commonly called Sara, bounded on the north by the lands of Don Guillermo Dunbart, on the south by lands of the party in interest, on the west by the left bank of said bayou, and on the east by the vacant lands of the domains of his Majesty, which boundaries were marked by the trees represented on the foregoing plan. In faith thereof, I deliver the present certificate, in conformity with the plan and explanations of the surveyor, Don Guillermo Dunbart, bearing date of the 20th of April of the present year, which original plan has been left with me to be annexed to the general map of that district. This survey has been made by order of his excellency Don Estevan Miro, under date of 9th of November last, (seventeen hundred and eighty-six.) All which I certify, in the city of New Orleans, on the 13th day of August, 1787.

CARLOS TRUDEAU,
Surveyor.

Don ESTEVAN MIRO, colonel of the royal armies, civil and military governor of the provinces of Louisiana, Mobile, and Pensacola, and inspector of their troops, &c.

Having examined the operations of survey which have been made by the surveyor of this province, Don Carlos Trudeau, in relation to the possession which he has given to Don Claudio Trenonay, of sixteen hundred superficial square arpents of land, situated in the district of Pointe Coupée, on the left bank of the bayou commonly called "Bayou la Sara," bounded on one side by another land of the interested party, Don Claudio Trenonay, and on the other side by lands of Don Guil-

...io Dunbart, as represented on the foregoing plan, and finding said ...rations of survey made out in conformity to the order of mensura-..., and pursuant to the concession of the adjoining neighbors, without ...ing them any prejudice, or giving rise to any oppositions on their ..., but on the contrary with their consent, as results from their assist-...e at the aforesaid operations, and approving them, as we do hereby ...prove them; therefore, in virtue of the power delegated to us by ... King, and in his royal name, we grant to said Don Claudio Treno-...y the sixteen hundred superficial arpents of land above referred to, ...t as his property he may dispose of them and enjoy them, in confor-...ty to the aforesaid operations of survey, and the conditions prescribed ... the regulations having reference to this subject.

Given under my hand, sealed with the seal of my arms, and coun-...rsigned by the secretary of his Majesty for this government, in New ...rleans, on the 13th day of August, 1787.

ESTEVAN MIRO.

By order of his excellency, AND. LOPEZ ARMESTO.

And further, on the 26th day of May, 1846, the counsel for petitioner ...ffered in evidence a certain document, marked C, which is in the words ...nd figures following, to wit:

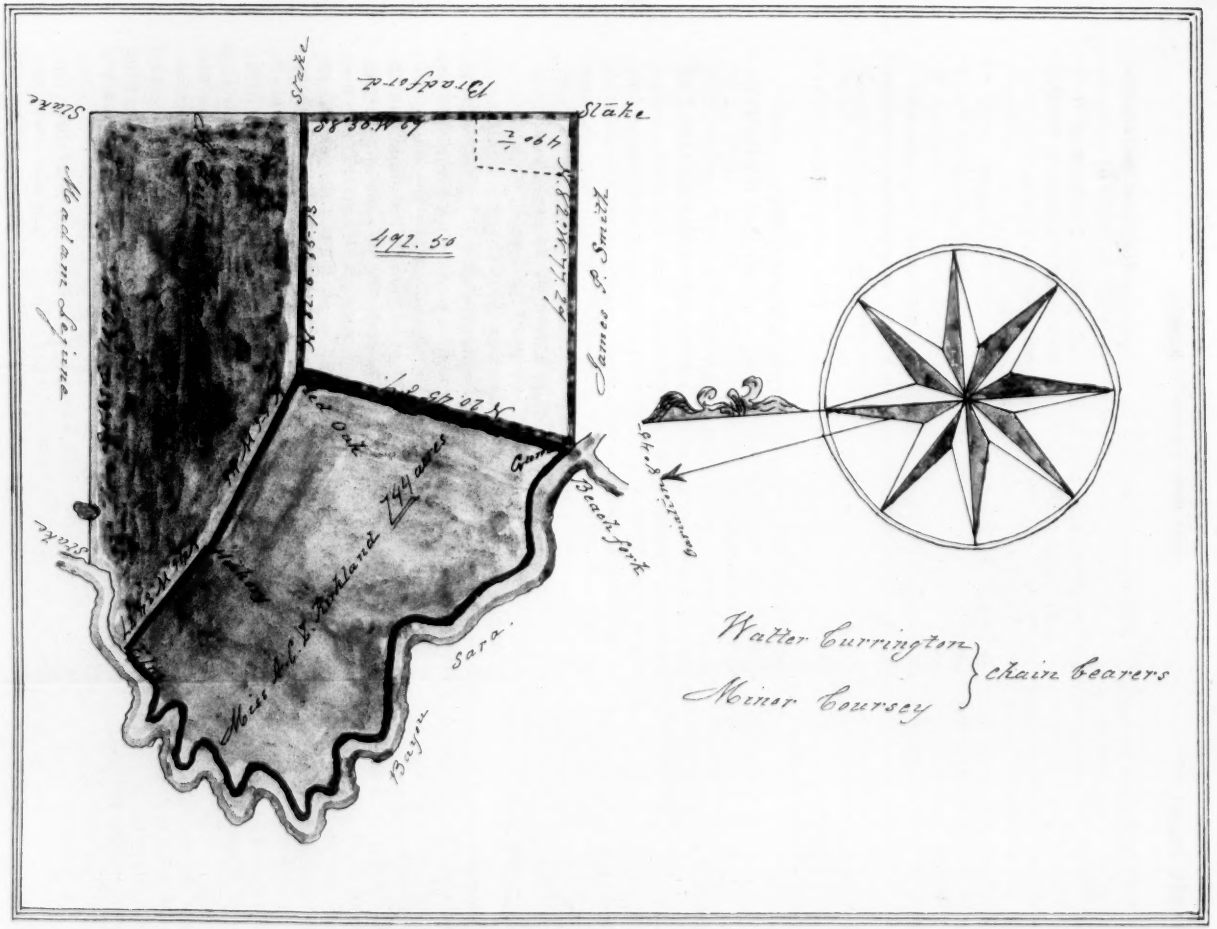
[For plat, see original, page 17.]

STATE OF LOUISIANA,
Parish of West Feliciana:

I certify, that I have surveyed a certain tract of land, patented by the Spanish Government to Claudio Trunonio, and which comprised part of the estate of *of* the late Mose Kirkland, deceased. Beginning at a gum on the east margin of bayou Sara, opposite the mouth of the Beach fork; thence, S. 82° E., seventy-seven five pole chain and twenty-nine links, to stake Buck and Bug; thence, N. 8° 30′ E., one hundred and seventeen four pole chains 47 links to stake; thence, N. 82° W., one hundred and nine five pole chains and nine links to stake, on the east margin of bayou Sara; thence, with the meanders of bayou Sara to the beginning corner at the Beach fork, and contains (exclusive of the part sold to David Lejune) seventeen hundred and forty-four acres. The subdivisions of the tract contain, as follows, the upper part colored green sold at sheriff's sale as the property of Hughes, and purchased by A. Guibert, five hundred and seven acres $\frac{465}{608}$. The part colored yellow, the western boundary of which is a line running from the red oak corner to the gum at Beach fork, contains four hundred and ninety-two acres and fifty-hundredths.

The part colored red, which constitutes the Kirkland plantation, contains seven hundred and forty-four acres.

Signed, SAMUEL N. D. CLARK,
October 26, 1827. *Parish Surveyor.*


Stake
Broadstreet
Stake
Stake
Meadow Swine
492. 50
James S. Smith
Beaverdam Creek
Stake
Beach Fork
Sara.
Bayou
Walter Currington
Minor Coursey
chain bearers

STATE OF LOUISIANA,
Parish of West Feliciana:

I do hereby [certify,] the within plat and certificate to be truly recorded in notarial record book D, in my office, page 493.

[L. S.] Given under my hand and seal official, this twenty third day of October, eighteen hundred and thirty-two.

Signed, JOHN B. DAWSON,
Parish Judge.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked D, which is in the words and figures following, to wit:

Copy.

Sepan quanto esta carta vieren como yo, Don Guillermo Kirkland, habitante de la Feliciana, que vendo realmente y con efecto al Señor None Kirkland, mil arpanes de tierra que se han de tomar de la concesion de Don Claudio Trenonay, segun el plano figurativo, siguiendo las forquillas del bayou Sara, y viniendo hacer un frente de veinte y cinco arpanes de frente, sobre la profundad de quarenta, adyacente a los seiscientos que hice donacion a Don Samuel Lewellyn, y se los vendo par la suma de diez mil pesos, pagaderos en la forma siguiente; dos mil de contado, y de los que le doy aqui formal recibo, tres mil pagaderos en Nueva Orleans, a primero de Octubre de mil ochocientos y ocho, dos mil y quinientos en Octubre de mil ochocientos y nueve, y los dos mil y quinientos restante en Octubre de mil ochocientos y diez; quedando d'ha tierra hypothecada hasta su entero pago; mediante lo qual me aparto y se paro del derecho de propriedad posesion, util, dominio, y señorio que a d'ha tierra habia y tenia, y todo lo cedo y traspaso en el comprador ó en quien su causa o derecho hubiere, para que como suya propia la posea, cambie o enagene a su voluntad (cumplido que sea el pago) en virtud de esta escritura, que a su favor otorgo en señal de real entrega con que ha de ser visto haber adquirido su posesion sin que necesite de otra prueba de que le relevo; y me obligo a la eviccion, seguridad, y saneamiento de esta venta en toda forma de derecho, con mis bienes habidos y por haber; doy aqui, por inserta la clausula guarentigia y renuncio las leyes de mi favor, con la general en firma que lo prohibe. Y estando presente al otorgamiento de esta escritura, y el expresado Don Mose Kirkland la accepto á me favor, recibiendo comprados los mil arpanes de tierra en el precio de diez mil pesos, de que he pagado dos mil de contado, y lo demas á los plazos estipulados, y de d'ha tierra me doy por entregado a mi voluntad.

En cuyo testimonio es fecha la carta en Baton Rouge, a los diez y ocho dias del mes de Mayo, de mil ochocientos y ocho, yo, Don Carlos de Grand Pré, coronel de los r's exercitos, gobernador militar y politico de la referida plaza, y su jurisdiccion, doy fe, conosco a lo otorgante

que lo firmaron siendo testigos, Don Thomas Estevan y Don Pedro Morel, presente.

WILLIAM KIRKLAND,
MOSES KIRKLAND,
CARLOS DE GRAND PRE.

THOMAS ESTEVAN,
PEDRO LUIS MOREL.

I, Charles Tessier, judge of the parish of East Baton Rouge, do hereby certify the foregoing to be a true copy of the original act on file in the archives of this parish.

In witness whereof I have hereto set my hand and the impress of my public seal, at Baton Rouge, the thirty-first of March, eighteen hundred and twenty-nine.

Signed, CHARLES TESSIER, *J. P.* [SEAL.]

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence the translation of document marked D, which is annexed to said document, and is in the words and figures following, to wit:

Translation: Know all men who see the present, that I, William Kirkland, inhabitant of Feliciana, do sell, really and effectually, to Mr. Moses Kirkland, one thousand arpents of land, which has to be taken from the grant made in favor of Dn. Claudius Trenonay, according to the figurative plan following the fork of the bayou Sara, making a front of twenty-five arpents with the depth of forty, leaving out the six hundred arpents of which I made a donation to Dn. Samuel Lewellyn; which described tract is sold for the sum of ten thousand dollars, payable in the manner following, viz: Two thousand dollars in ready money which I do acknowledge to have received; three thousand dollars payable in New Orleans on the first day of October, of one thousand eight hundred and eight; two thousand five hundred dollars in the month of October, of one thousand eight hundred and nine; and the remaining two thousand five hundred dollars, in the month of October, of one thousand eight hundred and ten; the said land remaining mortgaged until the entire and final payment; by means of which I separate and set myself apart from the right of property, possession, use, dominion, and lordship, which to the said land I had and held, and the whole thereof do cede and transfer to the purchaser, and to those who may have his cause and right, as his own to possess, change, or alienate at his will, on completing the payment in virtue of this sale, which I execute in his favor in token of a real delivery, by which it must be seen that he has acquired the possession thereof without the necessity of other proof by which to relieve him; and I obligate myself to the eviction, security, and soundness of this sale in due form of law with all my property, present and future. I give here to be inserted the clause of guarantee, and renounce the law in my favor, with the general one in form which prohibit. And I, Don Moses Kirkland, being present at the execution of this sale, do accept the same in my favor, receiving as bought

the one thousand arpents of land at the price of ten thousand dollars, of which I have paid two thousand dollars in ready cash, and the remainder payable within the terms herein stipulated, and the said land is hereby delivered at my will. In testimony of which the present sale is dated at Baton Rouge, the eighteenth day of May, one thousand eight hundred and eight. I, Don Charles de Grand Pré, colonel in the royal armies, governor military and civil of the said place and its jurisdiction, do certify, that I know the contracting parties hereto who have signed the same in presence of the witnesses, Don Thomas Estevan and Dn. Peter Morel.

WILLIAM KIRKLAND,
MOSES KIRKLAND,
CHARLES DE GRAND PRE.

THOMAS ESTEVAN,
PETER LOUIS MOREL.

And further, on the 26th day of May, 1846, the counsel for the petitioner offered in evidence a certain document, marked E, which document is a copy of the will of Moses Kirkland, and is in the words and figures following, to wit:

Ne varietur. THOS. W. CHINN, *Parish Judge*.

STATE OF LOUISIANA,
Parish of West Feliciana:

In the name of God, amen. I, Moses Kirkland, planter, being in good health, sound and disposing mind, memory, and understanding, I think it most proper time to make this my last olographic will and testament in manner and form following: I do make and declare this my last olographic will and testament, that is to say, in the first place, it is my mind and will, and I do hereby order and direct, that a line be run from the red oak tree, which is the corner tree between me and A. Gubert, standing a few yards to the right of my road, leading from my plantation to the main road from that corner tree, such a course as will strike my corner tree at the Black fork, and all my land east of such line, and joining on James P. Smith, and east to Messrs. Bradford and A. Brown, shall be sold as soon after my death as a decent price can be got for it, and the money arising from the sale of said land shall go to the purchase of slaves, which slaves I give, devise, and bequeath unto my natural sons, William P. Kirkland, Philip P. Kirkland, and Richard Kirkland, to be equally divided between them or their lawful begotten heir or heirs; but if either of my aforesaid natural sons should die without any lawful begotten heir or heirs, or if the said heir or heirs lawfully begotten should die before they obtain the age of twenty-one years, then, and in that case, I give, devise, and bequeath his or her full share of the said slaves to the survivor or survivors, or to their heir or heirs, lawfully begotten; but if unfortunately all my aforesaid natural sons should die, and their heir or heirs, lawfully begotten, die before they obtain [the] age of twenty-one years, then, and in that case, all the said

slaves, with the increase of the females, shall return to my estate, and be given, divided, and bequeathed in the same manner as my plantation, named Richland, slaves, stock, and appurtenances thereunto belonging, is hereafter given, divided, and bequeathed. The said slaves are not to be removed out of the State of Louisiana, without the consent given in writing of all my hereafter named executors. I give, devise, and bequeath unto my natural son, Richard, two male slaves, and one female slave, to be purchased by my hereafter named executors, as soon after my death as can be, without running my estate in debt, to be purchased from the sales of my crops made on my plantation, Richland, as follows, vic't, for his natural life, and to him, his heirs or assigns, lawfully begotten; but should he die, or his lawfully begotten heir or heirs die before they obtain the age of twenty-one years, then the said negro or negroes, or the survivor or survivors of them, as well as the full issue of the female, all are to return and belong to my estate, and belong to my lawful heir, Ann Catherine Zacharina Kirkland, or her heir or heirs, lawfully begotten of her body; and in no case the said slaves, or any part of them, or the issue female, to be subject to any debt heretofore or hereafter contracted by my natural son, Richard, or by any person or persons for him, any attempt by him, or any person or persons for him, to dispose of said negro or negroes, or any part of them, or of the issue of the female, or to remove them or any part of them out of this State, without a written permit from all my hereafter named executors, shall forfeit his right to the said negro or negroes, and the issue of the female.

Whereas, I am in justice, as heir at law, entitled to a large quantity of land in the State of South Carolina and Georgia, two of the United States of North America, I do hereby give, devise, and bequeath all the said lands to my natural sons William P., Philip P., and Richard, share and share alike, or to the survivor or survivors of them, and to the heir or heirs, lawfully begotten, forever. And whereas I am entitled to two thousand acres of land in West *Floreada*, the said laying upon or near the river Tombigbee, and as heir at law to my deceased father, Col. Moses Kirkland, I am also entitled to two thousand acres of land, laying or near the said river Tombigbee. The said lands were taken up and recorded by my deceased father, say about the year 1777, before the Spaniard took West Florida from the English; two thousand acres in his name, and two thousand acres in my name. I do hereby give, devise, and bequeath all the aforesaid lands, as well as all other tracts of land my deceased father may have taken up, bought, or otherwise obtained in West or East Florida, to my natural sons, William P., Philip P., and Richard, share or share alike, or to the survivor or survivors of them, or to their heir or heirs, lawfully begotten, forever.

(Signed) MOSES KIRKLAND,

(Bottom first page.)

I do hereby devise, give, and bequeath unto my natural son, Charles Rocford Kirkland, my plantation named Sportsman's Hall, laying on

Spanish river, in the parish of St. George, and Island of Jamaica; I do also give, devise, and bequeath to him my negro man, formerly named Bob, but christened Robert Kirkland, left with him in Jamaica, and to his heir or heirs, lawfully begotten; but if he should die without heir or heirs lawfully begotten, or his heir or heirs, lawfully begotten, should die before they obtain the age of twenty-one years, then and in that case I give, devise, and bequeath the said plantation named Sportsman's Hall, and the aforesaid negro man, named Robert Kirkland, to my natural sons, William P. and Philip P., share and share alike, and to their heir and heirs, forever. Should the whole or any part of the gifts and bequeaths made by this olographic will, be given during my lifetime, to the party or parties so given; then the said whole, or such parts so given, to be void to all intents and purposes.

I do hereby give, devise, and bequeath, unto my lawful daughter, Ann Catharine Zacharina Kirkland, my plantation named Richland, on which plantation I now reside, with all the land thereunto belonging, except what I have directed to be sold, with all the buildings and improvements of every description and *denunciation* whatsoever. I also give, devise, and bequeath, to my said daughter Ann, all the slaves I may die possessed of on said plantation, or in America, and all the stock of any kind, and appurtenances belonging to said plantation, Richland, to her and to her heir or heirs, lawfully born of her body. But if, unfortunately, she should die without lawful heir or heirs, born of her body, or if her heir or heirs, so born, should die before they obtain the age of twenty-one years, then, and in that case, I give, devise, and bequeath the aforesaid plantation named Richland, with all the buildings and improvements of every description, slaves, stock, and appurtenances thereunto belonging, unto my natural sons, William P., Philip P., and Richard Kirkland, to be equal owners of the said plantation Richland, slaves, stock, and appurtenances, belonging to said plantation; but if either of my aforesaid son or sons should die, without heir or heirs lawfully begotten, or if the said heir or heirs, lawfully begotten, should die before they obtain the age of twenty-one years, then I give, devise, and bequeath his or their full share of said plantation, slaves, stock, and appurtenances thereunto belonging, unto the survivor or survivors, and to their heir or heirs, lawfully begotten. It is not probable, yet it is possible, that all my natural sons, named in this will, may die without heir or heirs lawfully begotten, or the said heir or heirs, lawfully begotten, may die before they obtain the age of twenty-one years, and my lawful daughter Ann may die without heir or heirs lawfully born of her body, or the said heir or heirs, lawfully begotten, should die before they obtain the age of twenty-one years; if such an uncommon case should happen, I give, devise, and bequeath all the property, real and personal, I own in the United States of America, which is given away and bequeathed by this olographic will, to the heir or heirs, lawfully begotten, of my first cousin, Isaac Kirkland, as I am informed, deceased; he was the son of my uncle Richard Kirkland, and deceased. The said heir or heirs are now, as I am informed, resides in the State of Alabama.

When I die, I request I may be buried in a suit of black *close*; all the rest of my wearing apparel I leave to my natural son Richard Kirkland; my gold watch I leave to my natural son William P.; I also leave to Richard one of my fowling pieces, all the rest of my arms I request may be sold to go to the payment of my funeral expenses, or payment of lawful debts. I request, as soon after my death as possible, that my negro man Peter shall be made free, and that he be allowed each and every year the same diet and clothing that the slaves are allowed, also a piece of land to cultivate, and his house to reside on my plantation Richland, as long as he lives; and that he should [be] decently buried after his death, as he has been a good and faithful servant to me.

It is my desire, and I hereby direct, if Richard Kirkland should be living with me, as manager or overseer, at my death, that he should be discharged. If it should be after the middle of the year, he shall be allowed the same proportion of the crop, as if he was to remain to the end of the year. But if it should be before that time, then the amount of the salary that may be due him, with fifty dollars in addition, should be paid him. And I further direct, that no near relation of mine shall ever be employed, as manager or overseer, on said plantation Richland, of my hereafter named executors. I advise, that Messrs. Smith and Flowers should have the (signed at bottom 2d page Moses Kirkland) management of the plantation; as planters, they are the best judges how to manage it. I hereby place in trust of my hereinafter named executors my aforesaid plantation Richland, slaves, stock, and appurtenances thereunto belonging, as well as all other property I may die possessed of, real and personal, to be disposed of as directed by this will; and the remainders of such property, real and personal, to remain under their directions, or such part of them as may satisfy to act under this will, until my aforesaid daughter Ann shall attain the age of twenty-one years. But if she should get married, before she should obtain that age, with the consent of all my executors, then she shall be entitled to all the property left her by this will, real and personal. And I do hereby nominate, constitute, and appoint, James M. Bradford, esq., Benjamin Smith, Henry Flowers, planters, and Croann, cash merchant, all of this parish, my lawful executors; and I sincerely hope and request, they will see this my olographic will and testament put and carried into full force. And I do hereby declare this my last olographic will and testament, contained on one sheet of paper, and written with my own hand, set and subscribed my name and seal in manner following—that is to say, to the first half sheet, I have set and subscribed my name twice; and to this half sheet set and subscribed my name and affixed my seal, this sixth day of October, one thousand eight hundred and twenty-four.

(Signed) MOSES KIRKLAND. [SEAL.]

Ne varietur. THOS. W. CHINN, *Parish Judge*.

Recorded January 19th, 1827.

STATE OF LOUISIANA,
Parish of West Feliciana:

I certify that the eight preceding pages contain a true copy of the original will, as appears on record in my office, in probate record book A, on pages 306, '7, '8, and '9.

[L. S.] Given under my hand, and seal official, June 21st, 1832.

(Signed) JOHN B. DAWSON, *Parish Judge.*

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked F, which is in the words and figures following, to wit:

AMERICA A. KIRKLAND,
vs.
JAMES RUCKER AND WIFE.

STATE OF LOUISIANA,
Parish of West Feliciana, third district court.

May 29th, 1832.

In this case the court this day delivered its opinion as follows, to wit: This is an action instituted by the plaintiff, against the defendant, Ann C. Z. Kirkland, and her husband, James Rucker, to recover a certain legacy bequeathed by Moses Kirkland, deceased, to his natural son, Richard Kirkland, deceased; which legacy was purchased by the plaintiff at the probate sale of the estate of the said Richard Kirkland, deceased. The claim in the will of Moses Kirkland designates Richard Kirkland to be his natural son; and it is admitted by the plaintiffs in their petition, that the said Moses Kirkland left a daughter, who became his universal heir. It will be necessary to examine whether the legacy can be enforced in the above case. In examining the law upon this case, the court is of opinion, from article 1470 of the Civil code, which declares, "that natural children, or acknowledged bastards, cannot receive from their natural parents, by donation, *inter vivos* or *causa mortis*, beyond what is strictly necessary to procure their sustenance, or an occupation or possession which may maintain them, whenever their father or mother, who has thus disposed in their favor, leave legitimate children." It is therefore ordered, adjudged, and decreed, that judgment be rendered in favor of the defendants for costs of suit.

CHAS. BUSHNELL, *Judge 3d District.*

May 31st, 1832.

I certify the foregoing to be a true copy of the original judgment, as signed by the judge, now of record and file in my office, this 22d day of June, A. D. 1832.

[L. S.] (Signed) B. COLLINS, *Clerk.*

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked G, which is in the words and figures following, to wit:

To the honorable the judge of the third district of the State of Louisiana, holding court in the parish of West Feliciana.

The petition of James M. Reynolds and John B. Byrne, of New Orleans, merchants, transacting business under the firm [and] name of Reynolds, Byrne & Co., respectfully showeth: That on the 17th day of March, in the year 1829, James Rucker and Ann C. Rucker made their joint and several promissory note for the sum of four thousand dollars, payable to the order of Mrs. Mary Rucker, (all of said parish of West Feliciana.) On the fifth day of January then next after the date of said note, whereby the said James and Ann C. became legally bound and liable to pay the said note when it became due, showeth, that the said Mrs. Mary Rucker endorsed the said note, negotiated and transferred the same, and in the ordinary course of trade, for a valuable consideration, it came into possession of your petitioners, and at maturity the same was duly and legally protested, of which the said Mrs. Mary Rucker had legal and due notice, whereby she became legally bound to pay the same to your petitioners, with interest, damages, and costs of protest; showeth the said sum of money hath been legally demanded from the makers and endorsers, and the same hath not been paid to your petitioners, although they are legally entitled to demand and receive the same.

Wherefore they pray that the said James Rucker, Ann C. Rucker, and Mary Rucker, may be duly and legally cited to appear before this honorable court, and that they may be each and severally ordered, adjudged, and decreed to pay to your petitioners the said sum of $4,000, with interest from due, damages and cost of protest and costs of suit, and for general relief adapted [to] the nature, justice, and circumstances of the case.

TURNER & JOHNSON,
Attorneys for plaintiffs.

THE STATE OF LOUISIANA,
3d district court, parish of West Feliciana:

In the case of
REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER and Wife.

To James Rucker and wife, residing in the parish aforesaid.

You are hereby cited to comply with the demand contained in the petition of Reynolds, Byrne & Co., against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing with the clerk of the aforesaid court of this parish first aforesaid, in the town of St. Francisville, in ten days after the service hereof, and according to law, this 30th day of March, A. D. 1830.

Witness:

A. BETZOU,
Dep. clerk of said court.

(Endorsed on the back.)

Served by delivering to Ann Rucker, wife of James Rucker, she being a white person above the age of fourteen years, a copy of this citation; also a certified copy of plaintiffs' petition, at the residence of said Rucker, seven miles from St. Francisville, he, the said Rucker, being absent. April the 3d, 1830.

JAMES KELLY, *Dep. Sh'ff.*

Filed April 6th, 1830.

B. COLLINS, *Clerk.*

THE STATE OF LOUISIANA,
3d district court, parish of West Feliciana:

In the case of
REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER and als.

To Mary Rucker, residing in the parish aforesaid.

You are hereby cited to comply with the demand contained in the petition of Reynolds, Byrne & Co., against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing with the clerk of the aforesaid court of the parish aforesaid, in the town of St. Francisville, in ten days after the service hereof, and according to law, this fourth day of May, A. D. 1830.

Witness:

A. BEBZOUS,
Dep. clerk of said court.

(Endorsed on the back.)

Served by delivering to Mrs. Mary Rucker a copy of this citation, also a certified copy of the plaintiffs' petition, at her residence, eight miles from St. Francisville, May 5th, 1830.

M. COURTNEY, *Sheriff.*

Filed May 5th, 1830.

B. COLLINS, *Clerk.*

Dolls. 4,000. SAINT FRANCISVILLE, *March 17th*, 1829.

On the 5th of January next, we, jointly and severally, promise to pay to the order of Mrs. Mary Rucker, (at the Bank of Louisiana, in the city of New Orleans,) four thousand dollars, for value received.

JAMES RUCKER,
A. C. RUCKER.

(Endorsed on the back.) Mary Rucker, Renolds, Byrne & Co.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest.

Be it known, that on this seventh day of January, in the year one thousand eight hundred and thirty, at the request of Richard L. Booker,

esq., cashier of and holder for the Bank of Louisiana of the original note, whereof a true copy is on the reverse hereof written, I, Felix Pedesclaux, notary public, dwelling in the city of New Orleans, duly commissioned, presented said note to the proper office at the Bank of Louisiana, where the same is made payable, and demanded payment thereof. I was answered the same could not be paid for want of funds of the drawer; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers or makers of said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of said note.

Thus done in the presence of David O. Hincks and David L. McCay, witness.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.]

F. PEDESCLAUX, *Not. Pub.*

(Endorsed on the back.)

Dolls. 4,000. SAINT FRANCISVILLE, *March 17th*, 1829.

On the fifth of January next, we, jointly and severally, promise to pay to the order of Mrs. Mary Rucker, (at the Bank of Louisiana, in the city of New Orleans,) four thousand dollars, for value received.

JAMES RUCKER,
A. C. RUCKER.

Endorsed: Mary Rucker, Reynolds, Byrne & Co.

Filed March 24, 1830.

A. BELZOUS, *Dep. clerk*.

Third district court.

REYNOLDS, BYRNE & CO.,
vs.
JAMES RUCKER, WIFE, & MARY RUCKER.

The answer of Mary Rucker to the petition of plaintiffs, exhibited against her in the above entitled case, answer and says, that true it is this respondent endorsed a certain note, the same sued on, signed by the said James Rucker and wife, and payable to this respondent's order, calling for the sum of four thousand dollars to the above plaintiffs, but that respondent never received adequate consideration for the same; and that plaintiffs both knew, and were privy to said want of consideration, both before and at the time said note was executed and endorsed over to them: That it was agreed between this respondent and the said James Rucker and wife, with the said Reynolds, Byrne & Co., the said plaintiffs, that their joint account then due should be closed by note, signed by the said James and wife, and made payable to this respondent's order, and endorsed by her to the said plaintiffs; that said note so signed, made payable, and endorsed, should be drawn in the sum of

four thousand dollars; yet, although that sum exceeded the amount of the sum due the said plaintiffs on the said account current, which it was intended to liquidate and secure, nevertheless the said plaintiffs promised to let this respondent, with the said James and wife, have the excess or surplus in money, or make up an adequate consideration for the same; that the account current then existing, aforesaid mentioned, was in the sum of thirty two hundred dollars; that the note aforesaid, signed, executed, and endorsed aforesaid, is in the sum of four thousand dollars; that the surplus, eight hundred dollars, the said plaintiffs never paid over to this respondent, or to the said James and wife, as was promised and contracted to do, and of right and in equity should have been done. By reason above shewn, this respondent believes that she is fully warranted in pleading that said note was fraudulently and surreptitiously obtained from this respondent, and the said James and wife, by false pretences and the artifices of said plaintiffs. This respondent further pleads a want of consideration in the said sum of eight hundred dollars. Wherefore, this respondent prays that the said sum of eight hundred dollars be taken from the said sum of four thousand dollars due on said note as set forth, and for general relief.

ROBT. HAILE, *Att'y for Respondent.*

Filed May 21st, 1830.

B. COLLINS, *Clerk.*

Third district court.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER AND WIFE.

The answer of James Rucker and Ann Z., his wife, to the petition of plaintiffs, exhibited against them in the above entitled cause, answer and say, that these respondents do admit that they signed the note sued on, calling for the sum of four thousand dollars, and endorsed over to Reynolds, Byrne & Co., the above plaintiffs, by their mother, Mary Rucker; but that these respondents never received adequate compensation in consideration for the same; and that the said plaintiffs both knew, and were privy to said want of consideration, both before and at the time said note was executed and endorsed over to them; that it was agreed between these respondents, the said Mary Rucker and the said plaintiffs, that the account current between these respondents and the said Mary Rucker, with the said Reynolds, Byrne & Co., should be closed by note signed by these respondents, and endorsed by the said Mary Rucker to the said plaintiffs; that said note, so signed and endorsed, should be drawn in the sum of four thousand dollars; yet, although that sum exceeded the amount of the sum due the said plaintiffs in the account current which it was intended to liquidate, the said plaintiffs promised to let these respondents have the excess or surplus in money, or make up an adequate consideration to the same. That the account current then existing, aforesaid mentioned,

was in the sum of thirty-two hundred dollars; that the note signed, executed, and endorsed to plaintiffs, is in the sum of four thousand dollars; that the surplus, eight hundred dollars, the said plaintiffs never paid over to these respondents, as they promised and contracted to do, and of right and equity should have done.

By reason as above shewn, these respondents believe that they are authorized in pleading [that said note] was fraudulently and surreptitiously obtained from them by false pretences and artifices of the said plaintiffs. They further plead want of consideration in the said sum of eight hundred dollars. Wherefore, these respondents pray the said eight hundred dollars be subtracted from the sum mentioned in said note, as in equity and justice should be done.

B. HAILE, *Att'y for Respondents.*

Filed May 21st, 1830.

B. COLLINS, *Clerk.*

STATE OF LOUISIANA,
Parish of West Feliciana:

At a session of the honorable the third district court, began and held in and for the parish aforesaid, in the town of St. Francisville, on the third day of May, being the first Monday in said month, in the year of our Lord one thousand eight hundred and thirty: Present—The Honorable Charles Bushnell, judge of the 3d district, presiding.

May 26th, 1830.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER AND OTHERS.

Set for trial on the 27th instant.

May 28th.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER AND OTHERS.

This cause is ordered to be continued.

May term, 1831.

STATE OF LOUISIANA,
Parish of West Feliciana:

At a session of the third judicial district court for the parish of West Feliciana and State aforesaid, began and held at the court house of said parish, in the town of St. Francisville, on Monday, the second day of May, being the 1st Monday of said month, in the year of our Lord one thousand eight hundred and thirty-one: Present—The Honorable Clarke Woodroof, judge of the eighth district, holding sessions in the third.

REYNOLDS, BYRNE & Co., }
vs.
JAMES RUCKER AND OTHERS. }

Set for trial on the 9th instant.

THURSDAY, 26*th May*, 1831.

REYNOLDS, BYRNE & Co., }
vs.
JAMES RUCKER AND OTHERS. }

The defendants, by their counsel, move the court for a continuance of this cause, and filed an affidavit in support thereof. After argument of counsel having been heard, the court ordered that the said motion be overruled, and the case laid over until this day week.

STATE OF LOUISIANA,
Parish of West Feliciana:

REYNOLDS, BYRNE & Co., }
vs.
JAMES RUCKER AND OTHERS. }

Third district court.

Personally came and appeared in open court James Rucker, who, being duly sworn according to law, doth say, that the testimony of Hugh Bell is material to this affiant on the trial of the above entitled case; that this affiant expects to prove by said Bell a failure of consideration in the note sued on in plaintiffs' petition, in the sum of eight hundred dollars, or thereabouts, and fraud in the said plaintiffs in obtaining the execution of said note. This affiant further says, that on the 23d of March, 1831, or thereabouts, this affiant deposited by his attorney, Robert Haile, a commission, with interrogatories to the said Bell to answer, with J. A. Bermudez, city judge, in New Orleans, and the money, sufficient, as it was observed by the clerk of the said judge, to defray the expense in the taking thereof; with directions that the said evidence should be sent up when taken to this clerk of this honorable court.

That this affiant did not know but that said evidence was sent up to said clerk until the meeting of the court. That as soon as this affiant was apprised that said evidence had not come up as anticipated, that he forthwith, by his counsel, wrote to the said Bermudez to attend, if said evidence had not been taken, to the taking of the same, and that it be sent up to its proper destination. That no answer was received to the letter sent to the said Bermudez. That this affiant then wrote himself to the said Bermudez, to attend instantly to said business, paying the postage on his letter, as was the postage paid on the former letter, and as yet has received no answer from the said Bermudez, and no tidings of the commission left with him. That this affiant cannot go to trial safely without the testimony of the said Hugh Bell; that he has used due diligence to obtain the same, and that he expects to obtain the

same by next term of this court; that this affidavit is not made for delay, but to obtain justice.

JAMES RUCER.

Sworn to and subscribed, this 25th May, 1831.

B. COLLINS, *Clerk*.

Filed 26th May, 1831.

J. MADISON, *Dep. Clerk*.

FRIDAY, 3*d June*.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER AND OTHERS.

The defendant in this case moved for continuance; on filing affidavit, after hearing the argument, the court gave the following opinion viz:

On the 26th of May last past, an application was made on the part of the defendant for a continuance, on the ground of absent testimony on affidavit. The court were of opinion that due diligence had not been used in obtaining the testimony, about twelve months having elapsed since the cause had been at issue. *And* arrangement, however, took place between the counsel, by which the cause was postponed until the 2d of June instant, being the last of the term of the court, the parties agreeing to waive the three days allowed by law for making motion for a new trial, in case a trial should be had. On the 3d of June another application is made for a continuance, on the ground argued on the former motion, and, in addition, showing that the party has used all due diligence to procure the testimony in the interval since the postponement. The court is of opinion, that any diligence which the party may have used since the postponement cannot affect the question, provided diligence was not used before. The court perceives no reason to change their former opinion on that subject. The party has had about twelve months since the cause was at issue, and the witness is alleged to reside in the city of New Orleans. It is therefore ordered that the motion be overruled. Then defendants' counsel moved to file their amended answer, interrogating plaintiff, James M. Reynolds. After hearing the arguments, the court ordered the motion to be overruled. When one of the defendants, to wit, Mrs. Ann Z. Kirkland, wife of James Rucker, moved for permission to file her amended answer. Motion allowed and answer filed. When the counsel, R. Haile, moved for leave to withdraw his name from said amended answer, and substitute James M. Bradford. Motion allowed. When the court proceeded to the trial of the cause, and ordered the plaintiff's counsel have leave to strike out Reynolds, Byrne & Co., endorsed on the back of the note. And after hearing of the evidence and the argument of counsel, the court gave the following opinion, viz: It is principally argued in the defence of this cause, that Ann Z. Kirkland, one of the defendants, is not liable, as she is the wife of James Rucker, a married woman, and incapable of binding herself in this contract. It is not alleged in the petition that she is the wife, and the court does not perceive the

fact in the evidence adduced; but if it were proven, the court is of opinion that her incapacity is removed by the fact of her husband being a party to the contract; and it not appearing either that she was security for her husband, or that the note sued upon was for a debt of her husband, contracted before or during the marriage:

The court is therefore of the opinion that the plaintiffs' have fully made out their case against all the defendants. It is therefore ordered, adjudged, and decreed, that the plaintiffs do recover of the defendants, jointly and severally, the sum of four thousand dollars, with five per cent. thereon, from the 7th day of April, 1830, until paid; and three dollars and fifty cents costs protest, and costs of court.

STATE OF LOUISIANA, *Parish of West Feliciana:*

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER et als.

Personally came and appeared in open court James Rucker, one of the above defendants, who being duly sworn according to law, doth say, that the testimony of Hugh Bell, of the city of New Orleans, is material to this affiant in the trial of the above entitled case; that he has used every diligence to procure the testimony of said Bell for this term of the court; that, in addition to what has been shewn in the first affidavit of this affiant, in the first mail to New Orleans after the case was reset from the 26th to the second of June, to get said testimony, this affiant deposited a commission and interrogatories for the said Hugh Bell to answer, and directed to Judge Smith, in the city of New Orleans—through this affiant, commission merchants, Lee and Williams; that said commission and interrogatories have not yet returned; that this affiant cannot go safely to trial without said testimony; that he expects to prove by said Bell fraud in the above plaintiffs and a failure of consideration in the note sued on; that he *has* in expectation of procuring said testimony at the next term of this court; that this affidavit is not made for delay *delay*, but to obtain justice.

JAS. RUCKER.

Sworn and subscribed to before me, in open court.

B. COLLINS, *Clerk*.

Filed June 3d, 1831. B. COLLINS, *Clerk*.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER et als.

To the honorable the judge of the 3d judicial district, holding sessions in and for the parish of West Feliciana, State of Louisiana.

Ann Z. Kirkland, wife of James Rucker, one of the defendants in the above entitled case, comes into this honorable court, by the authorization of the judge had and obtained, and prays that she may interpose in said suit, for the reasons that follow, to wit:

Your petitioner says that the debt sued by plaintiffs is not of petitioner's contracting and has not ensued to her benefit, but solely contracted by the other defendants; that the answer put into the above petition by her husband, James Rucker, was done without her privilege or consent, advice or knowledge; that, being a married woman, she could not in the above case be made defendant, or be made to answer, the act of the husband being the act of the wife.

Your petitioner says, that, since the inception of the above suit, James Rucker has become insolvent, and a decree of separation is about to be entered up of property between your petitioner and the said James; that, should judgment be entered against your petitioner in the above case, there is every reason to believe that the whole debt, to wit, the sum of four thousand dollars, would fall entirely on your petitioner, and consequently endanger her separate estate. Your petitioner, therefore, claims to herself the power of protecting her own right, and her own just property; do[es] say that the note now sued upon by Reynolds, Byrne & Co., and endorsed by Mary Rucker and signed by James Rucker and your petitioner, was so signed through the advice and control of her said husband; that, as a married woman, your petitioner could not bind herself in such a case, and the act itself, when part, is a nullity. Wherefore, your petitioner prays that the said act, to wit, requires the above note may be denied, be a nullity, and for general relief.

JAMES M. BRADFORD, *Att'y for Pet'r.*

Filed June 3d, 1831. B. COLLINS, *Clerk.*

REYNOLDS, BYRNE & Co., }
vs.
JAMES RUCKER et alias. }

Third district court, parish of West Feliciana, Louisiana.

Be it remembered, that, on this 3d day of June, 1831, when this cause came on for trial, James M. Bradford offered to file a new answer in behalf of one of the defendants, Ann Z. Rucker, which was opposed by the counsel for plaintiffs, on the grounds, that it changed issue already made in the cause; was altogether inconsistent with an answer filed before by her attorney, Robert Haile, esq.; and because the application to file said answer was not accompanied by any evidence to show that the answer filed first in the cause signed R. Haile, esq., as her attorney, was done without authority. But the court permitted the new answer, signed by James M. Bradford to be filed, to which admission the plaintiffs by counsel objected, and tendered their bill of exceptions, and the same are allowed and signed by the court.

C. WOODROOFF,
Judge 8th district, acting in the 3d.

Filed June 4th, 1831. B. COLLINS, *Clerk.*

REYNOLDS, BYRNE & Co., }
vs.
JAMES RUCKER & al. }

United States vs. *Stirling*.

Be it remembered, that when the above case was called for trial, (to wit, on the 3d day of June, 1831,) the defendants, by counsel, moved the court to amend the answer to plaintiff's petition by propounding interrogatories to James Reynolds, of the firm of Reynolds, Byrne & Co., to respond. See amended answer, marked (C.) The court refused to allow said amendment. on the ground that [it] would continue the cause, and this opinion defendants, by their counsel, render *this* as their *as their* bill of exceptions.

C. WOODROOFF,
Judge 8th district, acting in the 3d.

Filed June 4th, 1831. B. COLLINS, *Clerk*.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER & als.

Be it remembered, that when the above case was called for trial, defendants moved the court for a continuance of the cause, and offered affidavit marked (B) in support thereof; and further, that as the cause was reset from the 26th of May, until the second day of June, to get the testimony of the absent witnesses, as mentioned in said affidavit, reasonable time had not elapsed to procure said testimony. The court held the above grounds to be insufficient and to this opinion of the court the defendants, by their counsel, except.

C. WOODROOF,
Judge 8th district, acting in the 3d.

Filed June 4th, 1831. B. COLLINS, *Clerk*.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER AND ALS.

Be it remembered, that when the above cause was called for trial, to wit, on the 26th day of May, 1831, defendants, by their counsel, offered the affidavit, marked A, for a continuance of the cause. The court held said affidavit to be insufficient, for the reasons given in the opinion on record, and to this opinion of the court defendants, by their counsel, tender this their bill of exceptions.

C. WOODROOF,
Judge 8th district, acting in the 3d.

Filed June 4th, 1831. B. COLLINS, *Clerk*.

Motion for a new trial.

REYNOLDS, BYRNE & Co.,
vs.
JAMES RUCKER AND ALS.

Because the judgment of the court is against law and evidence, ordered by the court that the said motion for a new trial in this case be overruled.

June 3d, 1831. The court is of opinion that plaintiffs have fully made out their case against all of the defendants. It is therefore ordered, adjudged, and decreed, that the plaintiffs do recover of the *of the* defendants, jointly and severally, the sum of four thousand dollars, with five per cent. per annum interest thereon from the seventh day of April, 1830, until paid. Three dollars and fifty cents costs of protest, and costs of suit. June 4th, 1831.

C. WOODROOF,
Judge of 8th district, acting in the 3d.

STATE OF LOUISIANA,
Third district court, parish of West Feliciana:

REYNOLDS, BYRNE & CO., }
vs.
JAMES RUCKER AND ALS. }

Mr. James Rucker, Mrs. Ann C. Rucker, and Mrs. Mary Rucker:

You are hereby notified, that a final judgment was rendered against you in the above entitled cause, on the third day of June, A. D. 1831, for the sum of four thousand dollars, with interest at the rate of five per cent. per annum, from the 7th April, 1830, and signed on the 4th June, 1831; if, therefore, the same is not paid within ten days from the service hereof, an execution will issue against you as the law directs.

J. MADISON, *Dep. clerk.*

Clerk's office, 17th June, 1831.

(Endorsed on the back.) Received Tuesday, 21st day of June, 1831, and served June 25th, 1831, by delivering to Mrs. Mary Rucker a copy of this notice of judgment. I also left a copy of the same for James Rucker, and one for his wife Ann C. Rucker; the said notices were left with Mrs. Mary Rucker, James and Ann C. Rucker being absent.

M. COURTNEY, *Sheriff.*
Filed, 25th June, 1831. J. MADISON, *Dep. clerk.*

The State of Louisiana, to the sheriff of the parish of West Feliciana, greeting:

We command you, that you demand from James Rucker, Ann C. Rucker, and Mary Rucker, the sum of four thousand dollars, with five per cent. interest thereon, from the seventh day of April, 1830, until paid. Also, the sum of thirty-seven dollars thirty-seven and a half cents costs, which Reynolds, Byrne & Co., lately recovered by a judgment of the third district court for the parish of West Feliciana; and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said James Rucker, Ann C. Rucker, and Mary Rucker, in your parish, if sufficient personal estate can be found therein; but if sufficient personal estate of the said James Rucker, Ann C. Rucker and Mary Rucker, cannot be found in your said parish, that then [you] cause the said sum to be made out of the real

estate and slaves, rights and credits, of said James Rucker, Ann C. Rucker, and Mary Rucker, in your said parish, whereof they were the owners, into whose hands soever the same may come; and that you have those moneys before our said court, to render to said Reynolds, Byrne & Co., for the judgment aforesaid, on the first Monday of February next, together with this writ.

Witness the honorable Charles Bushnell, judge of our said court, this third day of December, 1831.

J. MADISON, [SEAL.]
Dep. Clerk.

(Endorsed.)—Received this fi. fa. Saturday, the 3d of June, 1831.
M. COURNEY, *Sheriff.*

Dec'r 21, 1831. I this [day] demanded of the within named defendants, James Rucker, Ann C. Rucker, and Mary Rucker, payment for this fi. fa., together with interest and costs, which was refused by them. I demanded property out of which the amount may be made, when Ann Rucker described and gave up the tract of land formerly owned by Moses Kirkland, and known as the Richland place, containing by survey 744 acres, which I have seized accordingly, this 21st day of Dec'r, 1831.

JNO. PARKINSON, *Deputy Sheriff.*

Jan'y 12th, 1832. Notify the parties to appoint appraisers.
J. PARKINSON, *Deputy Sheriff.*

Jan'y 23d, 1832. I this day attended at the court house in St. Francisville, agreeable to public notice, and offered the property seized to satisfy this writ for sale, but made no sale for want of a bid to the amount required by law—the terms being cash.

M. COURTNEY, *Sheriff.*

Returned, filed 6th Feb'y, 1832.

J. MADISON, *Dep. Clerk.*

To M. Courney, sheriff:

You are hereby authorized and requested to seize and sell the tract of land formerly owned by Moses Kirkland, and now my property, and known by the name of the Richland place, containing, by a survey made by S. M. D. Clarke, esq'r, on the 26th of Oct., 1827, seven hundred and forty-four acres, which land I now give up to satisfy the execution in your hands issued in the case of Reynolds, Byrne & Co., vs. James Rucker, Mary Rucker, and myself. Dec'r 21st, 1831.

ANN RUCKER.

The above authorization is given with my consent, 21st December, 1831.

JAMES RUCKER.

Filed 13th March, 1832.

J. MADISON, *Dep. Clerk.*

Third district court, No. 827.

REYNOLDS, BYRNE & Co., }
vs.
JAMES RUCKER et als. }

We, the undersigned, being duly appointed and sworn appraisers to appraise the property seized by the sheriff of the parish of West Feliciana, to be offered for sale by him this day, to satisfy a writ of fi. fa., issued in the above suit, to wit, seven hundred and forty-four acres of land, the tract known as the Richland place, formerly owned by Moses Kirkland. We, the said appraisers, do appraise the said tract of 744 acres of land to be worth this day, in cash, the sum of fourteen thousand six hundred dollars.

A. BROWN,
JOSEPH BUATT.

Subscribed and sworn to before me, this 23d day of January, 1832.
JAMES H. MIX,
Justice of the Peace.

STATE OF LOUISIANA,
Parish of West Feliciana:

I, John B. Dawson, parish judge of said parish, and ex officio recorder and keeper of mortgages in and for the same, do hereby certify, that the following mortgages exist of record in my office against the property of Ann Z. C. Kirkland, the wife of James Rucker, to wit, in book of mortgages H, page 37, there is a judicial mortgage in favor of Isaac Allyn vs. James Rucker, Mary Rucker, and Ann Z. C. Rucker, for the sum of $219 85, of date the 25th of May, 1830. Also, in the same book, page 281, there is a judicial mortgage in favor of Reynolds, Byrne & Co., vs. James, Mary, and Ann C. Rucker, for the sum of $4000, of date 4th of June, 1831, and no others.

[L. S.] Given under my hand and seal official, this 23d of January, 1832.

JOHN B. DAWSON, *Parish Judge.*

The State of Louisiana, to the sheriff of the parish of West Feliciana, greeting:

We command you, as we have before, that you demand from James Rucker, Ann C. Rucker, and Mary Rucker, the sum of four thousand dollars, with five per cent. interest per annum thereon, from the 7th of April, 1830, until paid. Also, the sum of thirty-nine dollars and seventy-five cents costs of court, which Reynolds, Byrne & Co., recovered by a judgment of the third district court, for the parish of West Feliciana, and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estates of the said James Rucker, Ann C., and Mary Rucker, in your parish, if sufficient personal estate can be found therein; but if sufficient personal estate of the said James Rucker, Ann C. Rucker, and Mary Rucker, cannot be found in your

said parish, that then you cause the said sum to be made out of the real estate and slaves, rights and credits, of said James Rucker, Ann C. Rucker, and Mary Rucker in your said parish, whereof they are the owners, into whose hands soever they may come, and that you have those moneys before our said court to render to the said Reynolds, Byrne & Co., for the judgment aforesaid, on the first Monday of April next, together with this writ.

Witness the honorable Charles Bushnell, judge of our said court, this sixth day of February, 1832.

J. MADISON, *Dep. Clerk.*

Sheriff's return on fi. fa.

December 21st, 1831, I this day demanded of the within named defendants, James Rucker, Ann C. Rucker, and Mary Rucker, payment for this fi. fa., together with the interest and costs, which was refused by them; I demanded property out of which the amount may be made, when Ann Rucker described and gave up the tract of land, formerly owned by Moses Kirkland, and known as the Richland place, containing by survey 744 acres, which I have seized accordingly.

JOHN PARKINSON, *Dep. Sheriff.*

January 12th, 1832. Notified the parties to appoint appraisers.

JOHN PARKINSON, *Dep. Sheriff.*

January 23d, 1832. I this day attended at the court-house in St. Francisville, agreeable to public notice, and offered the property seized to satisfy the writ for sale, but made none for want of a bid to the amount required by law, the terms being cash.

M. COURTNEY, *Sheriff.*

I certify the foregoing extracts.

J. MADISON, *Dep. Clerk.*

February 14th, 1832. I this day attended at the court house in St. Francisville, and agreeable to public advertisement, offered the property seized in this suit for sale, on a credit of twelve months, and after repeatedly crying the same, there being no other bidders than Mrs. Ann C. Rucker, wife of James Rucker, who bid the sum of four thousand five hundred and twenty dollars and eighty-four cents, but who failed to comply with the terms of sale in giving security.

M. COURNEY, *Sheriff.*

March 5th, 1832. In consequence of Mrs. Ann C. Rucker, wife of James Rucker, not complying with the terms of sale on the 14th day of February, 1832, the property seized in this suit has been readvertised for sale, this day, on the same terms as offered on the 14th of February last, and at the same place, when I attended at the hour appointed, and after repeatedly crying the same, it was adjudged to Clark Woodroof, esq., for the sum of four thousand five hundred and forty-one dollars and ninety-six cents, he being the only bidder.

M. COURTNEY, *Sheriff.*

Third district court, parish of West Feliciana, May 5th, 1832.

REYNOLDS, BYRNE & Co., vs. JAMES RUCKER and others. } 827.

Twelve months after date, we, C. Woodrooff, as principal, and Hugh B. Maxwell, as security, promise to pay to Reynolds, Byrne & Co., or their assigns, the sum of four thousand five hundred and forty-one dollars and ninety-six cents, with five per cent. per annum interest thereon from the date hereof until paid, the same being for the purchase of one piece or parcel of land, situated in the parish aforesaid, bounded by A. Guibert and the big Bayou Sara, containing seven hundred and forty-four acres. The said land being heretofore seized, and this day sold by the sheriff of the parish aforesaid to satisfy a writ of fieri facias, issued in the above styled suit, C. Woodrooff became the purchaser thereof for the price and sum aforesaid, sign as principal to the bond, and Hugh B. Maxwell signs as his security, all granting a special mortgage on the said property until the full and final payment of said sum, interest, and costs is made.

C. WOODROOF,
H. B. MAXWELL.

Witness—M. COURTNEY, *Sheriff*.

STATE OF LOUISIANA,
Parish of West Feliciana:

I hereby certify, that the foregoing bond is truly recorded in my office at St. Francisville, in mortgage book H, page 374.

Given under my hand, and seal official, this 13th March, 1832.

[L. S.] JNO. B. DAWSON, *Parish Judge*.

STATE OF LOUISIANA,
Parish of West Feliciana:

Whereas I, Micajah Courtney, sheriff of the parish aforesaid, by virtue of a writ of fieri facias to me directed from the honorable the third district court, at the suit of Reynolds, Byrne & Co., vs. James Rucker, Ann C. Rucker, and Mary Rucker, did seize, on the 21st day of December, 1831, the following property, to wit: One tract of land and the improvements thereon, as the property of Ann C. Rucker, containing seven hundred and forty-four acres—bounded on the south and west by the big Bayou Sara; on the north by [lands of] H. Guibert; and on the east by lands of the defendant, Ann C. Rucker; said tract of land being the same as lately owned by Moses Kirkland, deceased, and known as the Richland place, the property of the defendant. Having exposed the same to public sale according to law, Clarke Woodrooff became the purchaser thereof for the price and sum of four thousand five hundred and forty-one dollars and ninety-six cents, on a credit of twelve months. By the parish judge's certificate of mortgage, which was read to the bidders, there appears to be the following of re-

cord against the property of Ann C. Rucker, to wit: A judgment in favor of Isaac Allen, for the sum of $219.85, of date the 25th of May, 1830, recorded in mortgage book H, page 37; and no other, except the one in favor of Reynolds, Byrne & Co., to satisfy which said tract of land is sold, recorded on the 4th day of June, 1831. Now, therefore, know all men by these presents, that I, the said sheriff, do, in consideration of the premises, and by virtue of an act in such cases made and provided, grant, bargain, sell, assign, and set over, to the said Clarke Woodrooff, his heirs and assigns, all the above described tract of land and improvements, and all the right, title, interest, or demand, which said Ann C. Rucker had to the same on the twenty-first day of December, A. D. 1831, as at any time since had, in or to the said property, or any part thereof, to hold the same to the said Clarke Woodrooff, his heirs and assigns, forever. In witness whereof, I have hereunto set my hand and seal, this fifth day of March, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-fifth year of the independence of the United States.

M. COURTNEY, [SEAL.]
Sheriff of West Feliciana.

Sealed, signed, and delivered, in the presence of—
JOHN PARKINSON,
E. W. LEVERETT.

Truly recorded, 8th March 1832

STATE OF LOUISIANA,
Parish of West Feliciana:

I certify that the foregoing twenty-two pages contain a full, true, and complete transcript of all the proceedings have, up to and including the sheriff's transfer in the suit of Reynolds, Byrne & Co., vs. James Rucker and others, No. 827 in the third district court and parish aforesaid, now of file and record in my office.

In testimony of all which, I have hereunto set my hand, affixed the [L. S.] seal of said [State,] this 7th day of September, 1832.

(Signed) B. COLLINS, *Clerk.*

And further, on the 26th day of May, 1846, the counsel for plaintiff offered in evidence a certain document, marked H, which document is the original sale made by the sheriff of the parish of West Feliciana to Clarke Woodrooff, and which is in the words and figures following, to wit:

STATE OF LOUISIANA,
Parish of West Feliciana:

Whereas, I, Micajah Courtney, sheriff of the parish aforesaid, by virtue of a writ of fieri facias to me directed from the honorable the third district court, at the suit of Reynolds, Byrne & Co., vs. James Rucker, Ann C. Rucker, and Mary Rucker, did seize, on the 21st day of December, 1831, the following property, to wit: One tract of land and the improvements thereon, as the property of Ann C. Rucker, con-

taining seven hundred and forty-four acres—bounded on the west and south by the big Bayou Sara; on the north by [land of] A. Guibert; and on the east by lands of the defendant, Ann C. Rucker; said tract of land being the same as lately owned by Moses Kirkland, deceased, and known as the Richland place, the property of defendant; and having exposed the same to public sale according to law, Charles Woodruff became the purchaser thereof, for the price and sum of four thousand five hundred and forty-one dollars and ninety-six cents, on a credit of twelve months. By the parish judge's certificate of mortgage, which was read to the bidders, there appears to be the following of record against the property of Ann C. Rucker, to wit: A judgment in favor of Isaac Allen, for the sum of $219.87, of date the 25th of May, 1830, recorded in mortgage book H, page 37; and no other, except the one in favor of Reynolds, Byrne & Co., to satisfy which said tract of land is sold, recorded on the 4th day of June, 1830.

Now, therefore, know all men by these presents, that I, the said sheriff, do, in consideration of the premises, and by virtue of the act in such case made and provided, grant, bargain, sell, assign, and set over, to the said Clarke Woodruff, his heirs and assigns, all the above described tract of land and improvements, and all the right, title, interest, or demand, which the said Ann C. Rucker had to same on the 21st day of December, A. D. 1831, as at any time since had in or to said property, or any part thereof; to hold the same to the said Clark Woodruff, his heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal, this fifth day of March, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-fifth year of the independence of the United States.

(Signed) COURTNEY, [L. S.]
Sheriff of West Feliciana.

Sealed, signed, and delivered in presence of.
(Signed) JNO. PARKISON,
ELL. LEVERETT.

THE STATE OF LOUISIANA,
Parish of West Feliciana.

I certify, that the foregoing transfer has been truly recorded in book of transfers, on page one hundred and forty-seven, kept in my office for that purpose, this eighth day of March, A. D. 1832.

[L. S.] (Signed) JAS. MADISON,
Dep. Clerk.

STATE OF LOUISIANA,
Parish of West Feliciana.

I hereby certify, that the foregoing transfer is truly recorded in my office at St. Francisville, in notarial record book D, page 344–'5.

Given under my hand and seal official, this 9th March, 1832.

(Signed) JOHN B. DAWSON,
Parish Judge.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document marked I, which document is a deed and mortgage by C. Woodroof to Ruffin G. Sterling, and is in the words and figures following, to wit:

STATE OF LOUISIANA,
Parish of West Feliciana.

Be it remembered, that on this first day of January, eighteen hundred and thirty-four, before me, Robert C. Wederstrandt, notary public in and for the parish aforesaid, duly commissioned and sworn, personally appear Clark Woodrooff, of the parish of St. Tammany, of the first part; and Ruffin G. Stirling, of the parish first aforesaid, of the second part. And the said Clark Woodroof declared, that for and in consideration of the sum of forty-six thousand eight hundred and fifty-three dollars and seventeen cents, ten thousand dollars cash to him paid by said Ruffin G. Stirling, before the signing and ensealing of these presents, the receipt whereof is hereby acknowledged; ten thousand dollars to be paid by the said Ruffin G. Stirling, to the president, directors, and company of the Union Bank of Louisiana, it being the sum due them by said Clark Woodroof, and for the payment of which the said Ruffin G. Stirling hereby obligates and binds himself, his heirs, and assigns, to pay for said Clark Woodrooff to the said Union Bank, at New Orleans, when the same shall become due; and the six promissory notes of said Ruffin G. Stirling, of even date herewith, payable to the order of Lewis Stirling, are endorsed by him, bearing interest at the rate of ten per cent. per annum after due until paid, payable and negotiable at the banking house of said Union Bank in New Orleans, and are marked ne varietur by me, the notary, to identify them with this act. One of the said notes, payable on the first day of January, 1835, for the sum of five thousand dollars; one for five thousand dollars, payable on the first day of January, 1836; one for five thousand dollars, payable on the first day of January, 1837; one for five thousand dollars, payable on the first day of January, 1838; one for five thousand dollars, payable on the first day of January, 1839, and one for one thousand eight hundred and fifty-three dollars and seventeen cents, payable on the first day of January, 1840; making, in all, forty-six thousand eight hundred and fifty three dollars and seventeen cents, (this sale having been made for forty thousand dollars cash,) hath given, granted, bargained, sold, set over, aliened, and conveyed, and doth by these presents give, grant, bargain, sell, set over, alien, and convey, unto said Ruffin G. Stirling, of the second part, (the said party being also present and accepting,) a certain tract of land situate, lying, and being in the parish of West Feliciana, in said State, fronting on Bayou Sarah, commonly called the Richland place, and containing about seven hundred and ninety arpents, more or less, being the same sold by the sheriff of the parish of West Feliciana, on the 5th day of March, 1832, at the suit of Reynolds, Byrne & Co., of New Orleans, against James Rucker and wife and Mary Rucker, and whereof the said Clark Woodrooff became the pur-

Chaser, with the same limits and boundaries as are set forth in said sale. Also, all that tract or parcel of land, situate in the parish last aforesaid, on the Woodville road, about two miles from St. Francisville, usually called the Laurel Grove place, containing about six hundred arpents more or less, being the same purchased on the 23d day of May, 1825, by said C. Woodrooff, of the late Elizabeth Bradford, deceased, with the same limits and boundaries as therein described, with the same reservations, servitudes, and privileges as are therein set forth; together with all the buildings, improvements, constructions, houses, negro cabins, stables, stores, barnes, instruments of husbandry, horses, mules, oxen, stock of sheep, cattle, goats, and hogs, household and kitchen furniture, and all and every, the appurtenances on both said tracts of land, and thereunto belonging. Also, a certain lot or parcel of land, containing one square acre, situate in said parish, at the junction of the bayou Sarah with the river Mississippi, being on the west side of said bayou, fronting one acre on said river and one acre on said bayou, it being the same purchased by said vendor of Ichabod Woodruff and wife, on the 29th day of December, eighteen hundred and thirty-two, by act passed before said notary. Also, two hundred and one shares of bank stock in the Union Bank of Louisiana, owned at present by said vendor, and the right to any further stock that may be allowed on his subscription; and the following described thirty-one negroes, of the sex, names, and ages as follows, to wit: Man Aaron, aged about 26 years; man Dread, about 30 years; man Isaac, about 25 years; man Jeff, about 38 years; man Sambo, about 40 years; man Anthony, about 18 years; man Horatio, about 16 years; boy Isam, about 12 years; boy Lewis, about 10 years; man Hanibal, about 21 years; woman Sally, about 27 years; woman Mary, about 26 years; woman Julia, about 25 years; Lear, about 22 years; woman Kitty, about 20 years; woman Louisa, about 18 years; girl Nancy, about 12 years; woman Roda, about 48 years; woman Minty, about 32 years; woman Comfort, about 50 years; woman Henrietta, about 20 years; boy Little Isaac, 5 years; girl Sarah, 4 years; girl Eliza, 3 months; boy Alfred, 5 years; boy William, 8 years; girl Fanny, 4 years; boy Nelson, 1 year; boy Jim, 6 years; girl Mary Ann, 5 years; and boy Little Aaron, 3 years; to have and to hold the aforesaid two tracts of land, with the improvements thereon and thereunto belonging, instruments of husbandry, horses, mules, oxen, stock of sheep, cattle, goats, and hogs, household and kitchen furniture, &c., on both said tracts of land; the one-acre lot at the mouth of bayou Sarah, the two hundred and one shares of bank stock, and the above recited and named thirty-one negroes, unto the said Ruffin G. Stirling, his heirs, and assigns, to their proper use and behoof, forever. And the said Clark Woodrooff, for himself, his heirs and assigns, the before recited tract of land, called Laurel Grove, bank stock, and negroes, instruments of husbandry, horses, &c., against all and every person and persons whomsoever, unto the said Ruffin G. Stirling, his heirs and assigns, shall and will warrant, and forever defend, by these presents; but the said Clark Woodroof gives no other warrantee on the Richland tract of

land, and the one acre at the mouth of bayou Sarah, than he received from his vendors; but hereby binds and obligates himself, his heirs and assigns, in case of eviction of said vendee, his heirs or assigns, from the said Richland tract, to return the purchase money for the said last mentioned tract, estimated at the sum of nine thousand dollars; and the three hundred dollars estimated as the purchase money of the said one acre lot. The said Ruffin G. Stirling, waiving the necessity of the certificate of the judge and recorder, and keeper of mortgages, required by law, "Civil code, art. 3328." And with a view of securing the said Clark Woodrooff, his heirs and assigns, in the true and faithful payment of the above mentioned sums of money, he, the said Ruffin G. Stirling, hath agreed to mortgage and hypothecate and does by these present, absolutely mortgage and hypothecate unto the said Clark Woodrooff, his heirs and assigns, the above described two tracts of land, the one acre lot, and the thirty-one negroes herein conveyed. To remain so mortgaged and hypothecated, until the full and final payment of the aforesaid sums of money. And the said Ruffin G. Stirling does hereby further agree and consent, that this mortgage and hypothecation is to operate as, and have the full force and effect of a final judgment, rendered in a court of competent jurisdiction, within the State of Louisiana.

It is understood between the parties hereto, that, provided the property herein mortgaged, or any part thereof, shall be sold to pay any part of the said purchase money, the bank stock secured upon such property shall be considered as sold with the property, in such proportion as it was received by the bank.

Thus done and passed at St. Francisville, the day and year first aforesaid, the parties having hereunto set their hand and seals, the one granting, and the other accepting, in the presence of Martin P. Clark and Ralph E. Courtney, witnesses, who have also signed their names as such, and of me, the notary.

(The original is signed) C. WOODRUFF, [L. S.]
RUFFIN G. STIRLING. [L. S.]

Witnesses: M. P. CLARK,
R. E. COURTNEY.

R. C. WEDERSTRANDT, *Not. Pub.*

STATE OF LOUISIANA, *Parish of West Feliciana.*

I, Robert C. Wederstrandt, notary public in and for the parish aforesaid, duly commissioned and sworn, do hereby certify, that the foregoing copy of deed and mortgage contained on this, and the four preceding pages to which this sheet is annexed, is a true copy from the original on file in my office.

Given under my hand and seal official, this 1st day of January, [L. S.] 1834.

(Signed) R. C. WEDERSTRANDT, *Not. Pub.*

STATE OF LOUISIANA, *Parish of West Feliciana.*

I, John B. Dawson, parish judge of the parish and State aforesaid, and recorder and keeper of mortgages in and for the same, certify that

the foregoing deed and mortgages is truly recorded in my office, in notarial record book "E," on pages 159, 160, and 161.

Given under my signature and seal official, this, the 2d day of [L. S.] January, 1834.

(Signed) JNO. B. DAWSON, *Parish judge.*

STATE OF LOUISIANA, *Parish of West Feliciana*

I, John B. Dawson, parish judge of the parish and State aforesaid, and ex officio recorder and keeper of mortgages in and for the same, certify that the within mortgage and deed is truly recorded in my office, in mortgage record book "I," on pages 191, 192, and 193.

Given under my signature and seal official, this, the 2d day of [L. S.] January, 1834.

(Signed) JNO. B. DAWSON, *Parish judge.*

STATE OF LOUISIANA, *Parish of West Feliciana.*

I, John B. Dawson, parish judge of said parish, and ex officio recorder and keeper of mortgages in and for the same, do certify, by these presents, that I have examined my books of mortgages, and I find no mortgage as given by Clark Woodruff, except that mortgage in favor of the Union Bank of Louisiana for the sum of twenty-four thousand dollars, upon the property sold on the first day of January, 1834, by said Clark Woodruff to R. G. Stirling; the said property known by the names of Richland and Laurel Grove, with all their appurtenances, together with thirty-one slaves and stock upon the said Richland and Laurel Grove plantations. And I do further certify, that I find no other mortgage (other than the one above stated) as given upon the said described property, except that given by R. G. Stirling on the transfer of Woodruff to him.

Given under my signature and seal official, this fifth day of April, [L. S.] 1834.

(Signed) JNO. B. DAWSON, *Parish judge.*

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document marked J; which document is a copy of a deed of William Kirkland to Asa Brown, and is in the words and figures following, to wit:

STATE OF LOUISIANA, *Parish of Feliciana.*

Be it known to all who shall see these presents, that, on the day of the date hereof, personally came and appeared William Kirkland, of the parish of Feliciana, and Precilla Howell, and Charles B. Howell, of the parish of St. Helena, of the one part, and Asa Brown, of the parish of Feliciana, of the other part, before me, John H. Johnson, judge of the said parish of Feliciana, and ex officio notary public therein. And the said William Kirkland and Precilla Howell, by and with the consent and advice of *he*, the said Charles B. Howell, declared and acknowledged that, for and in consideration of the sum of two thousand five hundred and fifty dollars, lawful money of the United States, to them in hand paid by the said Asa Brown before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, the

said Wm. Kirkland and Precilla Howell, by and with advice and consent of her husband aforesaid, have given, granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, release, convey, and confirm, unto the said Asa Brown, his *hns* heirs, and assigns, the one-half of a certain tract or parcel of land of six hundred arpents, situate, lying, and being in the parish of Feliciana aforesaid, comprised in the following boundaries, to wit: bounded on the east by lands of Moses Kirkland, on the west by lands sold by said William Kirkland and Precilla Kirkland, with consent of her said husband, to John Hughes, and conveyed by him to the said John Hughes, which conveyance bears even date with these presents, and on the north by lands of David Lajeune, containing three hundred arpens, being the east side or half of the tract whereon the late Samuel Lewellyn resided.

To have and to hold the same unto the said Asa Brown, his heirs, and assigns, to their own proper use, benefit, and behoof, forever, on the said William Kirkland and Precilla Howell, by and with the advice and consent of her husband aforesaid, the above described and granted premises, together with all and singular the rights, privileges, and appurtenances, of and to the same belonging, or in any wise appertaining, unto him, the said Asa Brown, his heirs, and assigns, from and against them, the said William Kirkland and Precilla Howell, their heirs, and assigns, and from and against all and every other person or persons whomsoever, shall and will warrant, and by these presents forever defend.

In testimony whereof, the parties aforesaid being present, interchangeably set their hands and affix their seals, the one granting, and the other accepting, in my presence, and in that of Levi Rotliff and John H. Mills, assisting witnesses, this 9th day of December, in the year of our Lord one thousand eight hundred and sixteen.

WM. KIRKLAND, [L. S.]
PRECILLA HOWELL, [L. S.]
C. B. HOWELL, [L. S.]
ASA BROWN. [L. S.]

Witnesses: LEVI ROTLIFF,
JOHN H. MILLS,
WM. KIRKLAND, Jr.,
E. PEARSON.

Truly recorded, 6th April, 1818.

JOHN H. JOHNSON,
Parish judge of Feliciana.

STATE OF LOUISIANA, *Parish of West Feliciana.*

I certify that the foregoing is a true copy of the original, as appears of record in my office. Given under my hand and seal official, this 9th day of August, 1825. [L. S.]

(Signed) THOS. W. CHINN, *Parish judge.*

And further, on the 26th day of May, 1846, the counsel for petition-

er offered in evidence a certain document marked K; which document is a copy of a deed of William Kirkland to John Hughes, and is in the words and figures following, to wit:

STATE OF LOUISIANA, *Parish of Feliciana*.

Be it known to all who shall see these presents, that, on the day of the date hereof, personally came and appeared William Kirkland, of the parish of Feliciana, and Precilla Howell and Charles B. Howell, of the parish of St. Helena, of the one part, and John Hughes, of the parish of Feliciana, of the other part, before me, John H. Johnson, judge of said parish, and ex officio notary public in and for the same; and the said William Kirkland and Precilla Howell, by and with the advice and consent of her husband, the said Charles B. Howell, declared and acknowledged, that for and in consideration of the sum of three thousand four hundred and fifty dollars, lawful money of the United States, to them in hand well and truly paid by the said John Hughes before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, the said William Kirkland and Precilla Howell, by and with the consent and advice of her husband aforesaid, have given, granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, release, convey, and confirm, unto the said John Hughes, his heirs, and assigns, the one-half of a certain tract or parcel of land of six hundred arpents, situate, lying, and being in the parish of Feliciana aforesaid, comprised in the following boundaries, to wit: beginning at the lower corner of the tract of land whereon the late Samuel Lewellyn resided, being a part of said tract; running *running* thence, up the bayou Sarah, to the line of David Lejeune; thence, along the line of said Lejeune and Moses Kirkland, equal distances from the said bayou Sarah, so that a line dividing the said tract will include three hundred arpents, the same being bounded on the east by lands sold by the said William Kirkland and Precilla Howell, by and with the consent of her husband aforesaid, to Asa Brown, and conveyed by them to the said Asa Brown, which conveyance bears even date with these presents; on the south by lands of Moses Kirkland; on the west by the main bayou Sarah, and on the north by lands of David Lajeune.

To have and to hold the same, together with all the buildings and improvements standing thereon, unto him, the said John Hughes, his heirs and assigns, to his and their proper use, benefit and behoof, forever; and the said William Kirkland, and Precilla Howell, with the consent of her husband aforesaid, the above described granted premises, together with all and singular the rights, privileges, and appurtenances of and to the same belonging, unto him, the said John Hughes, his heirs and assigns, from and against them, the said William Kirkland and Precilla Howell, their heirs and assigns, and against all and every other person or persons whomsoever, shall and will warrant and forever defend by these presents.

In testimony whereof, the parties aforesaid being present, subscribe their names, and affix their seals hereunto, the one granting and the

other accepting, in my presence, and in that of John H. Mills and Levi Rotliff, assisting witnesses, this 9th day of December, A. D. 1816.

WM. KIRKLAND, [SEAL.]
PRECILLA HOWELL, [SEAL.]
C. B. HOWELL, [SEAL.]
JOHN HUGHES. [SEAL.]

Witnesses—LEVI ROTLIFF,
JOHN H. MILLS,
WM. KIRKLAND, JR.,
E. PEARSON,

JOHN H. JOHNSON,
Parish Judge of Feliciana.

Truly recorded, this 6th May, 1818.

STATE OF LOUISIANA,
Parish of West Feliciana:

I certify, that the foregoing is a true copy of the original as appears of record in my office. Given under my hand and seal official, this 9th day of August, 1825
[L. S.]

(Signed) THOS. W. CHINN, *Parish Judge.*

And further, on the 26th of May, 1846, the counsel for petitioner offered in evidence a certain document, marked L, which document is a copy of a deed of Asa Brown, to Hughes and Hampton, and is in the words and figures following, to wit:

STATE OF LOUISIANA,
Parish of Feliciana:

Be it remembered, that on the day of the date hereof, before me, William C. Wade, judge of the parish of Feliciana, and ex officio notary public in and for the same, came and appeared Asa Brown, of the parish and State aforesaid, of the one part; and John Hughes, of the same State and parish, and John P. Hampton, of the county of Wilkinson and State of Mississippi, of the other part; and the said Asa Brown declared and acknowledged, that for and in consideration of the sum of four thousand dollars, lawful money of the United States, to him in hand well and truly paid by the said John Hughes, *lawful money of the United States, to him in hand well and truly paid by the said John Hughes*, and John P. Hampton, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said John Hughes and John P. Hampton, their heirs and assigns, acquitted and forever discharged from the same, hath given, granted, bargained, sold, aliened, and conveyed, and by these presents doth give, grant, bargain, sell, alien, and convey, unto the said John Hughes and John P. Hampton, their heirs and assigns, forever, the one half of a certain tract or parcel of land of six hundred arpents, situate, lying, and being in the parish and State aforesaid, comprised in the following boundaries, to wit: On the east, by land of David Bradford, deceased; on the south, by lands of Moses Kirkland; on the west, by

land sold by William Kirkland and Precilla Howell to said John Hughes; and on the north, by land of David Lejeune—containing three hundred arpents; being the east side or half of said tract whereon the late Samuel Lewellyn lately resided, and being the same land sold by Precilla Howell, Charles B. Howell, and William Kirkland to said Asa Brown, with a reservation to the said Brown, of the liberty and privilege secured to the said Brown, of cutting down sixty oak trees every year on said land, at such points thereon as the said Hughes or Hampton shall direct; and to take and carry off the bark, without any accountability for the same. And it is further understood between the said parties, that if the said Asa Brown does not cut in each year the said number of oaks, he hereby renounces thereafter the right of cutting said number on said point or place he may have been directed to do by said Hughes or Hampton. And it is further understood, and agreed, that said reservation of trees are only such as are now fit and large enough for bark; and that this privilege to said Brown is transferable.

To have and to hold the above described tract or parcel of land, together with all and singular the rights and privileges, except as hereby before reserved, and the improvements thereon, unto the only proper use, benefit, and behoof of them, the said John Hughes and John P. Hampton, their heirs and assigns, forever; and the said Asa Brown, for himself, his heirs and assigns, the before recited land, and bargained presently unto the said John Hughes and John P. Hampton, their heirs and assigns, doth hereby warrant, and forever defend, from and against himself, his heirs and assigns, and against the claim or claims of all and every person or persons whomsoever.

In testimony whereof the parties aforesaid have hereunto set their hands and affixed their seals, the one granting and the other accepting, in presence of John Mud and James M. Bradford, assisting witnesses, and of me, said judge, this 30th day of March, 1819.

ASA BROWN, [SEAL.]
JOHN HUGHES, [SEAL.]
JOHN P. HAMPTON. [SEAL.]

JOHN MUD,
JAMES M. BRADFORD.

WM. C. WADE, *Parish Judge*.

STATE OF LOUISIANA,
Parish of West Feliciana:

"I certify that the foregoing is a true copy of the original, as appears of record in my office. Given under my hand and seal official, this 9th August, A. D. 1825.
[L. S.]

(Signed) THOS. W. CHINN, *Parish Judge*.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked M, which document is a copy of sheriff's sale to A. Guibert, and is in the words and figures following, to wit:

Whereas, I, Benjamin Collins, sheriff of the parish of Feliciana, State of Louisiana, by virtue of an order of seizure and sale, and writs of fieri facias to me directed, from the honorable the third district court, parish and State as aforesaid, against six hundred acres of land, situate in the parish and State aforesaid, bounded north by David Lajeune, east by Asa Brown and Mrs. Elizabeth Bradford, south by Moses Kirkland, and west by Bayou Sara, at the suit of the heirs of William Kirkland, Asa Brown, and C. Fitzsimmons, vs. John Hughes, as the property of said John Hughes, did, by virtue of said order and writs of *fieri facias*, seize said property; and having exposed the same to public sale according to law, Augustus Guibert became the purchaser thereof for the price of seven thousand one hundred and fifty dollars, on a credit of twelve months, for which he has given his bond, with security and mortgage, which I hereby acknowledge to have received.

Now, therefore, know all men by these presents, that I, the said sheriff, do, in consideration of the premises, and by virtue of the law in such case made and provided, grant, bargain, sell, and set over, to the said Augustus Guibert, his heirs and assigns, all the above described tract or parcel of land, with all the improvements thereon, and all the right, title, interest, or demand which the said John Hughes, on the the 9th day of December, 1816, or at any time since, had in or to the said tract of land, or any part thereof: To hold the same to the said Augustus Guibert, his heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal, this 14th day of July, in the year of our Lord one thousand eight hundred and twenty one, and in the forty-sixth year of the independence of the United States.

B. COLLINS, *Sheriff*, [SEAL.]
Sheriff of the parish of Feliciana.

Sealed and delivered in presence of—
L. HARDESTY,
F. A. BROWDERY.

STATE OF LOUISIANA,
Parish of West Feliciana:

I certify, that the foregoing is a true copy of the original, as appears of record in my office.

Given under my hand and seal official, this 8th August, A. D. [L. S.] 1825.

Signed, THOMAS W. CHINN,
Parish Judge.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked N, which document is a copy of a probate sale in the estate of A. Guibert, and is in the words and figures following, to wit:

Probate sale of estate, A. Guibert, deceased.

STATE OF LOUISIANA,
Parish of West Feliciana:

Be it remembered, that on this ninth day of February, in the year of our Lord one thousand eight hundred and thirty-three, in conformity with an order from honorable court of probates of said parish, and after the legal advertisement in the Phœnix, a newspaper published in St. Francisville, I, John B. Dawson, parish judge of the parish aforesaid, and ex officio auctioneer in and for the same, repaired to the late residence of Augustus Guibert, deceased, for the purpose of making a public sale of all the property, real and personal, belonging to the succession of said deceased, consisting of a tract of land, negroes, farming utensils, horses, furniture, books, &c., &c., on the following terms and conditions, viz:

The plantation and the following five slaves, viz: Charles, Collins, Dick, Moses, and Harriet, to be sold on a credit of one, two, three, four, and five years, the purchaser to give a bond and mortgage in favor of the President, Directors & Co. of the Bank of Louisiana, at St. Francisville, for the amount due by said succession to said President, Directors & Co., at the terms and condition of the bond and mortgage executed in favor of them, to secure the payment of loans on mortgage security; and that if the said land and five slaves should sell for more than sufficient to pay said bank, that the purchaser of said land and five slaves shall give his obligation with approved security to the administrator of said succession, for such overplus, with mortgage on the said property, and confession of judgment. The said obligation to bear ten per cent. interest, after due until paid, and payable at the office of discount and deposit of the Bank of Louisiana. The remainder of the slaves to be sold on a credit of one, two, and three years from day of sale, the purchasers to give their obligations, with two approved securities, payable at the said office, bearing ten per cent. interest after due until paid, and mortgage on the property purchased with confession judgments. The personal property be sold as follows: All sums under twenty dollars, cash; all sums under twenty-five dollars, on a credit of twelve months, purchasers to give their notes with two approved securities, payable at said office, bearing ten per cent. interest after due. Having made known the foregoing terms and conditions to the bidder, I opened the sale by offering for sale the plantation or tract of land, containing about six hundred arpents, being the same whereon the said deceased resided, and purchased by him at the sheriff's sale of Hughes, bounded north by land of the late Mrs. Lejune; south by Mrs. Glasscock, east by Clark Woodruff, and west by bayou Sarah; and the said five slaves, to wit, Charles, Collins, Dick, Moses, and Harriet, in one lot; and after repeatedly crying same aloud, the said land and five slaves were adjudged to Mrs. Mary W. Guibert, she being the last and highest bidder, for the price and sum of seven thousand one hundred dollars, and she agreed to comply with the terms of sale, and offers as her security Charles McDumatt and Benjamin Collins.

Witness: C. B. GUIBERT.

And there being no other property presented out for sale, I close this sale the day and year aforesaid, in presence of C. C. S. Farear and Robert Brock, witnesses, who sign this process as such, with said judge and auctioneer.

A. BEAUROIS.

Witnesses—ROBERT BROCK,
C. C. S. FARRAR.

JOHN B. DAWSON, *Parish Judge*.

STATE OF LOUISIANA,
Parish of West Feliciana:

I hereby certify the foregoing extract to be a true one of record and file in my office from probate's sales book B, pages 434, 435, and 438. Given under my hand [and] seal official, this 17th day of June, A. D. 1836.

[L. S.]

JOHN B. DAWSON, *Parish Judge*.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked O, which document is a copy of a deed of M. C. Guibert to Moses L. Meeker, and is in the words and figures following, to wit:

THE STATE OF LOUISIANA,
Parish of West Feliciana:

Be it remembered, that on the day of the date hereof, before me, John B. Dawson, parish judge of said parish and ex officio notary public in and for the same, personally came and appeared Mrs. Mary Constance, widow Guibert, of the first part, and Moses L. Meeker, of the second part, both of the parish of West Feliciana aforesaid; and the said first appearer declared and acknowledged, that for and in consideration of the sum of eight thousand nine hundred dollars, lawful money of the United States, to be paid as follows, to wit, one-third on the 9th of February, 1834; one-third on the 9th of February, 1835; one-third on the 9th of February, 1836; hath given, granted, bargained, sold, and set over, aliened and conveyed, and by these presents doth give, grant, bargain, sell, set over, alien, [and] convey, unto the said Moses L. Meeker, his heirs and assigns, (the said party being present and accepting,) a certain tract of land, situate about two miles from the town of St. Francisville, containing about six hundred arpents, bounded on the north by lands of the estate of Mrs. Lejune, deceased, east by Judge Woodruff, south by Cooly, Glasscock, and Marshall, west by bayou Sarah; same tract lately purchased by Mrs. Guibert at the probate sale of Augustus Guibert, deceased; also, the six following slaves, viz: Dick, Collins, Hannah, and her daughter Arina, Yellow Harriette.

To have [and] to hold the said slaves and tract of land and bargained premises, with all the rights, titles, privileges, and appurtenances, of, in, and to the same belonging, or in any wise appertaining, unto the only proper use, benefit, and behoof of the said Moses L. Meeker, his heirs and assigns, forever; and the aforesaid Mary Caroline, for herself

and her heirs, executors, &c., the before recited slaves and bargained premises, unto the said Moses L. Meeker, his heirs and assigns, will warrant and forever defend against herself, and all and every other person or persons whomsoever.

Thus done and passed at St. Francisville, in the parish and State aforesaid, this fifteenth day of April, in the year of our Lord one thousand eight hundred and thirty-three, in the presence of E. Cooley, jr., and N. C. Hall, assisting witnesses, who having signed their names as such, I grant these presents, under my official signature and seal, the day and year before written. Both parties agreeing to waive the parish judge's certificate of mortgages, &c.

C. B. GUIBERT,
MOSES L. MEEKER.

Witnesses—E. Cooley, Jr.,
N. C. Hall.

JOHN B. DAWSON, *Parish Judge*.

State of Louisiana,
Parish of West Feliciana:

I hereby certify, that the foregoing extract is a true one from notarial record book 71 and 72.

[L. S.] Given under my hand and seal official, this 17th day of June, 1836.

Signed, JOHN B. DAWSON, *Parish Judge*.

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence a certain document, marked P, which document is a copy of a deed from Moses L. Meeker to Ruffin G. Stirling, and is in the words and figures following, to wit:

State of Louisiana,
Parish of West Feliciana:

Be it remembered, that on the day of date hereof, before me, John B. Dawson, parish judge of said parish, and ex officio notary public in and for the same, personally came and appeared Moses L. Meeker of the first part, and his wife, Mathilda Meeker, by him aided and assisted, also of the first part, of the parish and State aforesaid, who declared and acknowledged, that for and in consideration of the sum of seven thousand seven hundred and thirty-two dollars and fifty cents, lawful money of the United States, to him in hand paid by Ruffin G. Stirling of the second part, also of the parish and State aforesaid, the receipt of which is hereby acknowledged, and the said Ruffin G. Stirling, his heirs and assigns, forever, acquitted, released, and discharged of the same forever; hath given, granted, bargained, sold, set over, aliened, and conveyed, and by these presents, doth give, grant, bargain, sell, set over, alien, and convey, unto the said Ruffin G. Stirling, his heirs and assigns, the said party being present and accepting, a certain tract or parcel of land situate in said parish, containing five hundred and fifteen and a half arpents (more or less) on the following boundaries to wit: north by Judge

Matthews; east by Ruffin G. Stirling; south by E. Cooley, jr., Oscar Pillitt, and Ruffin G. Stirling; and west by Ruffin G. Stirling and bayou Sarah; being the same tract bought of Mrs. Guibert by said appearers, on the 18th April, 1833, for about six hundred arpents, but on a re-survey found to contain only five hundred and fifteen ½ arpents. To have and to hold the said tract of land and bargained premises, with all the rights, titles, privileges, and appurtenances, of, in, and to the same belonging, or in any wise appertaining, unto the only proper use, benefit, and behoof of the said Ruffin G. Stirling, his heirs and assigns, forever; and the aforesaid Moses L. Meeker and Matilda Meeker, aided and assisted as aforesaid, for their executors, &c., the before recited land and bargained premises, unto the said Ruffin G. Stirling, his heirs and assigns, will warrant and forever defend against themselves, and all and every other person or persons whomsoever.

Thus done and passed at St. Francisville in the parish and State aforesaid, this 27th day of January, in the year of our Lord one thousand eight hundred and thirty-six, in the presence of P. B. McKilsey and Seth P. Stoffard, assisting witnesses, who, having signed their names as such, I grant these presents under my official seal and signature, the day and year before written; both parties agreeing to waive the parish judge's certificate of mortgages, &c.

M. L. MEEKER,
M. MEEKER,
R. G. STIRLING.

Witnesses, P. B. McKilsey,
S. P. Stafford.

JNO. B. DAWSON, *Parish Judge.*

State of Louisiana,
Parish of West Feliciana:

I hereby certify, that the foregoing extract is a true one from the notarial record "E," pages 14 and 15.

Given under my official signature and seal, this 18th day of June, A. D. 1836.

(Signed) JNO. B. DAWSON, *Parish Judge.*

State of Louisiana,
Parish of West Feliciana:

I, Jno. B. Dawson, parish judge of said parish, and ex officio keeper and recorder of mortgages in and for the same, certify by these presents, that I have carefully examined the books of mortgages in my office, and I find no mortgage whatever recorded against the foregoing tract of land bought by Ruffin G. Stirling of Moses L. Meeker, as therein specified, or prior by the said Ruffin G. Stirling, Moses L. Meeker, Madam M. C. Guibert, or A. Guibert, dec'd, or Asa Brown, or John Hughes, or William Kirkland, or John P. Hampton.

Given under my hand and seal official, this 21st day of June, 1836.

(Signed) JNO. B. DAWSON, *Parish Judge.*

And further, on the 26th day of May, 1846, the counsel for petitioner offered in evidence the testimony of Wm. Flower, taken in open court, which is in the words and figures following, to wit:

William Flower, being duly sworn in open court, deposes and says, that he went into the parish of West Feliciana, in 1792 or 1793, and has been there off and on ever since.

He recollects the name of Claudio Trenonay, and thinks he has seen him at his father's house about 1794 or 1795.

Being shown document B, witness says, he is well acquainted with the tract of land described in said document, and that as early as 1794 Wm. Kirkland was residing on said tract. He thinks Moses Kirkland lived on said tract prior to 1808. Said Moses Kirkland lived on said tract until his death.

Witness knows Mrs. Ann C. Rucker, she was the only legitimate child of Moses Kirkland. Mrs. Rucker and her husband were in possession of said tract, and Mrs. Rucker continued to possess it after her father's death. Clark Woodruff was afterwards in the possession of this tract, and after him Ruffin G. Stirling.

William Kirkland and Precilla Kirkland, wife of Howell, were the children of Wm. Kirkland, who sold a part of said tract to Moses Kirkland.

Witness knows John Hughes, a relation of Hampton, to have been in possession of a part of said land sold by Wm. Kirkland; has heard that Wm. Kirkland sold to Asa Brown, but was never at Brown's house.

He knows of the possession of Mrs. Mary C. Guibert and husband, A. Guibert, of Moses L. Meeker, and of Ruffin G. Stirling, the petitioner.

Mrs. Precilla Howell (above mentioned) first married Lewellyn, and after his decease married one Greene, (as witness thinks,) and after Greene's decease married Howell, the person who joined with her in the sales to Brown and to Hughes.

Cross-examined.

Witness does not know of Trenonay's having any other claim in Feliciana.

A. D. Smith, (whose name is mentioned in register A, of claims west of Pearl river, made by Cosby, 1816, 3d State papers on public lands, Duff Green's edition, p. 35,) claimed the land adjoining that of Moses Kirkland on the south side, a little southwest; he claimed all the land from that possessed by Moses Kirkland to the mouth of bayou Sarah. Witness thinks the land marked in doc. B, with the name "Don Claudio Trenonay," lying south of the land claimed in this suit, was the land claimed by A. D. Smith. Witness thinks A. D. Smith was acting as agent of his father, John Smith. On reading from register B, of Cosby's Reports west of Pearl river, 1816, same book above mentioned, p. 53, claim No. 307, claimed by Wm. Kirkland; original claimant, W. Kirkland; nature of claim, a plat; quantity claimed, 1,600 arpents;

1220.

situated in Feliciana; inhabited and cultivated from 1804 to 1814, and surveyed in 1802. Witness thinks it is the same land improved by Wm. Kirkland, the elder, and possessed by him, and situated on Redwood creek, and in what was then "Feliciana," and is now "East Feliciana," being, as witness thinks, the same land since owned by Gen. E. W. Ripley, and now owned by his son-in-law Thornton Lawson. Witness does not know the quantity of land claimed by Kirkland; but knows that he claimed a large quantity.

And on the 26th day of May, 1846, the following judgment was entered on the minutes, in the words and figures following, to wit:

TUESDAY, *May* 26, 1846.

Present, the Hon. T. H. McCaleb.

RUFFIN G. STIRLING } vs. } 13.
THE UNITED STATES. }

This cause came on for trial this day; whereupon the petitioner offered in evidence the documents marked from A to P inclusive, and also the evidence of William Flower, on file.

On consideration whereof it is ordered, adjudged, and decreed by the court, that the petitioner has made out a good and valid claim against the United States for the tract of land mentioned and described in document B; being a plat of survey made by Carlos Trudeau, on the 13th of August, 1787, and patent granted by Estevan Miro, governor of the province of Louisiana, on the day last aforesaid to Claudio Trenonay, describing the same as being situate in the district of Point Coupee, on the bayou Sara; bounded on the north by lands granted to William Dunbart, (or Dunbar;) east by vacant lands; south by other lands belonging to said Trenonay; and west by the bayou Sarah. Commencing at a gum tree, opposite the forks of the bayou Sarah; thence, east two hundred and seventy perches, to a stake; thence, north four hundred perches, to a stake; thence, west six hundred perches, to a cypress tree on the bank of the bayou Sarah; thence, by the meanders of said bayou, to the place of beginning; containing sixteen hundred superficial arpens. And it is further ordered that the petitioner pay the costs of this suit.

And on the 6th day of June, 1846, the following judgment was engrossed on the petition, and signed by the judge, to wit:

United States district court, district of Louisiana.

TUESDAY, *May* 26, 1846.

Present, the honorable T. H. McCaleb.

RUFFIN G. STIRLING } vs. } 13.
THE UNITED STATES. }

This cause came on for trial this day; whereupon the petitioner of-

fered in evidence the documents marked from A to P inclusive, and also the evidence of William Flower, on file.

On consideration whereof, it is ordered, adjudged, and decreed by the court, that the petitioner has made out a good and valid claim against the United States for the tract of land mentioned and described in document B; being a plat of survey made by Carlos Trudeau, on the 13th of August, 1787, and patent granted by Estevan Miro, governor of the province of Louisiana, on the day last aforesaid, to Claudio Trenonay, describing the same as being situate in the district of Point Coupee, on the bayou Sara; bounded on the north by land granted to William Dunbart, (or Dunbar); east by vacant lands; south by other lands belonging to said Trenonay; and west by the bayou Sarah; commencing at a gum tree opposite the forks of the bayou Sarah; thence, east two hundred and seventy perches, to a stake; thence, north four hundred perches, to a stake; thence, west six hundred perches, to a cypress tree on the bank of the bayou Sarah; thence, by the meanders of said bayou, to the place of beginning; containing sixteen hundred superficial arpens. And it is further ordered that the petitioner pay the costs of this suit.

Judgment rendered May 26, 1846. Judgment signed June 6, 1846.

(Signed,) THEO. H. McCALEB,
U. S. judge.

And on the 5th of November, 1846, the following petition of appeal was filed in the clerk's office, to wit:

R. G. STIRLING
vs. } 13.
THE UNITED STATES.

To the honorable Theodore H. McCaleb, judge of the district court of the United States, for the district of Louisiana.

The petition of the United States respectfully shows, that it is believed there is error in the judgment rendered by this honorable court on the twenty-sixth day of May last, 1846, in the matter of R. G. Stirling vs. The United States.

Wherefore they pray, that your honor may be pleased to allow an appeal from said judgment to the Supreme Court of the United States.

(Signed,) THOMAS J. DURANT,
Attorney U. S.

Orders of the judge.

Let this petition be filed, and an appeal granted as prayed for.

(Signed,) THEO. H. McCALEB,
U. S. Judge.

Let the said appeal be returnable on the 3d Monday of February, 1847.

(Signed,) THEO. H. McCALEB,
U. S. Judge.

And on the 13th day of February, 1847, the following motion was entered on the minutes, to wit:

SATURDAY, *February 13th*, 1847.

Present, the honorable T. H. McCaleb.

R. G. STIRLING
vs. } 13.
THE UNITED STATES.

Upon motion of Thomas J. Durant, U. S. district attorney, that the land cause No. 13, and entitled as above, appeal has been granted from the judgment rendered therein to the Supreme Court of the United States, at Washington, and that the said appeal has been made returnable on a subsequent day, during the present session of the Supreme Court, and not on the first day of said term, as the practice generally is; to the end that said case of appeal might have its chance of being tried during the present session; and, as no object will be gained by issuing citation to the appellee, directing him to appear at any other time than on the first day of the said term of said court, it is therefore ordered, that the order upon the said petition of appeal, in said cause, be so amended as to make it returnable on or before the commencement of the next annual session of the Supreme Court.

Clerk's office, United States district court, in and for the district of Louisiana.

I, Needler R. Jennings, clerk of the court aforesaid, do hereby certify the foregoing ninety-three pages and sixteen lines to contain a true and complete transcript of the record in the case of R. G. Sterling *versus* the United States of America, number 13 on the docket of said court, embracing the pleadings and orders of court, as well as all the testimony adduced by the parties on the hearing of the said cause, from the original record now on file in my office.

In testimony whereof I have hereunto signed my name and caused to be affixed the seal of the said court, at New Orleans, this twenty-third of October, in the year of our Lord one thousand eight hundred and forty-seven, and the seventy-second year of the independence of the United States of America.

[SEAL.]

N. R. JENNINGS, *Clerk*.

I, Theodore Howard McCaleb, judge of the United States district court for the district of Louisiana, do hereby certify, that Needler R. Jennings, who signed the above certificate, is, and was at the time of signing the same, the clerk of the United States district court for the district of Louisiana; that faith and credit are due, and ought to be given, to his attestations as such; and that the above certificate is in due form of law.

In testimony whereof I have hereunto signed my name and affixed my seal, this 25th of October, in the year of our Lord one thousand eight hundred and forty-seven, and the seventy-second of the American independence.

The words interlined "and was at the time of signing the same."

THEO. H. McCALEB, *U. S. Judge*. [SEAL.]

United States district court, for the district of Louisiana, to Ruffin G. Sterling, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States of America, to be holden at Washington city, on the first Monday of December next, pursuant to an order of appeal granted on the 13th day of February, 1847, by the district judge of the United States for the district of Louisiana, in a certain suit wherein you are plaintiff, and the United States are defendants, to show cause, if any there be, why the decree rendered on the 26th day of May, 1846, against the said appellants, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, at New Orleans, this fourteenth day of August, A. D. 1847.

THEO. H. McCALEB, *U. S. Judge*.

Received, August 26th, 1847, and on the 13th day of September, 1847, I served a copy of the above citation in error on Ruffin G. Sterling, by handing the same to him in person, in the parish of West Feliciana, 170 miles from the court-house at New Orleans. Made this my return, Sept. 13, 1847.

WM. F. WAGNER, *U. S. Marshal*.
J. H. RINEHART, *U. S. Dy. Marshal*.

Filed November 15, 1847.

1222.

SUPREME COURT OF THE UNITED STATES.

No. 159.

THE UNITED STATES, APPELLANTS,

vs.

LEWIS N. SHELTON.

APPEAL FROM THE DISTRICT COURT U. S. FOR LOUISIANA.

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J. & G. S. Gideon, printers.

United States district court, district of Louisiana.

LEWIS N. SHELTON, vs. THE UNITED STATES. } No. 12.

Be it remembered, that on the twenty-first day of February, A. D. 1846, the plaintiff in the cause as above entitled and numbered, appeared by his counsel in the clerk's office of the district court of the United States for the district of Louisiana, and filed his petition in the words and figures following, "*to wit:*"

To the honorable district court of the United States, in and for the district of Louisiana: The petition of Lewis N. Shelton, residing in the city of New Orleans, respectfully shews—

That on the 10th of February, 1799, Don Manuel Gayoso de Lemos, governor of the province of Louisiana, did grant to Don Pedro de Marigny, a tract of land described as containing 1500 arpens, situated in the district of Feliciana, bounded on the north by lands belonging to Juan Gautier, and on all other sides by the banks of the Mississippi river and Feliciana, now Thompson's creek, after a requette order of survey, and survey made by Carlos Trudeau, surveyor general of the province, on the 1st of February, 1799; all of which documents are hereunto annexed for reference.

Your petitioner further shews, that said land is minutely described and represented in a particular survey made by William H. Cobb, a deputy surveyor of the United States, in September, 1837, in pursuance of an order of the surveyor general of the United States, and was compared by the surveyor general and found to correspond with the original Spanish survey, and was filed in his office the 6th day of November, 1837; by which survey, on account of the change in the banks of the Mississippi river, the claim was found to contain two thousand two hundred and ten superficial acres, as appears by the said survey, a copy of which is annexed.

Your petitioner further shews, that said tract of land is correctly represented on the map of township No. 4, range No. 2 west, land district east of the island of New Orleans, and west of Pearl river, as sections 19, 20, 21, and 24, which is also hereunto annexed.

Your petitioner alleges that the tract of land was inherited by his heirs, from Pedro de Marigny, the Spanish grantee, and he holds it by regular conveyances under them.

He further alleges, that although the United States sold parts of said land to Randolph, Jefferson, and others, yet the United States have cancelled their sales, and restored the price; and there is no claim to said land adverse to your petitioner, except that of the United States.

Your petitioner shews, that the title papers to said tract of land were regularly recorded in the land office of the St. Helena district, in ac-

cordance with the requisition of the act of Congress of the 6th of February, 1835, for a favorable report by the register and receiver of the land office, and confirmation of the claim by Congress; but it has never been confirmed; and the Government of the United States still pretend a claim to said land.

Your petitioner therefore alleges that he is entitled, under the act of Congress approved the 17th day of June, 1844, authorizing suits to be instituted against the United States, for the purpose of trying titles to lands in the state of Louisiana, and for other purposes, to have his claim established against the United States in this honorable court; the benefit of which act of Congress he now claims.

The premises considered, your petitioner prays leave to file this his petition; that a copy thereof be served upon the district attorney of the United States for this district. And he prays, that after proper proceedings had, it may be decreed by this honorable court that the title of your petitioner to the tract of land above described, is valid and good against the United States, and that he is entitled to a patent from the United States for said tract according to the survey made of Wm. H. Cobb as mentioned above and filed in this court.

And your petitioner prays for all other and further relief which justice, equity, and the nature of his case may require.

As in duty bound, &c.

(Signed) ISAAC T. PRESTON,
Attorney for Petitioner.

Service acknowledged, February 21st, 1846.

(Signed) S. W. DOWNS,
U. S. Att'y, district of La.

And on the 6th day of April, 1846, the following answer to the above petition, by E. Warren Moise, for S. W. Downs, U. S. att'y dist. of La., was filed in the clerk's office of the U. S. district court for the district of Louisiana, to wit:

To the honorable the district court of the United States for the district of Louisiana:

The United States, through their attorney, S. W. Downs, deny the allegation in plaintiff's petition, and allege absolute title in these respondents, and pray for judgment accordingly.

(Signed) E. WARREN MOISE,
For S. W. DOWNS,
U. S. Att'y, dist. La.

And on the 6th day of April, A. D. 1846, the following entry was made on the minutes, to wit:

MONDAY, *April 6th*, 1846.

Present—Hon. Theo. H. McCaleb.

LEWIS N. SHELTON, vs. THE UNITED STATES. } 12.

Fixed by the U. S. attorney for April 16, 1846.

Copy of document A, filed March, 28th, 1846, and offered in evidence by plaintiff.

S'or Gov'or Gral:

Dn. Pedro Marigny, comm'te de las milicias voluntarias de Mississippi, a vs. expone q'l en el districto de la Nueva Feliciana se hallan unas tierras vacantes de cipriera, y tierra alta las q'l en tiempos atrasados estuvieron en poder del defunto Fara sin q'l p'a ello huviere consecion de este Gobierno, y ni antes ni despues han sido medidas p'r lo que vs. supp'ca se sirva concederle mil y quinientos arpanes, y otras immediatas á las anteriormente concedidas a Dn. An'to Gautier, cuyo favor espera de la acostumbrada bonda de vs.

Nueva Orleans, 7 Novembre, 1798.

(Signed) PEDRO D. MARIGNY.

Nueva Orleans, 7 de Nov., 1798. Dn. Vicente Pintado, agrimensor del districto de Feliciana, ape los mil y quenientos arpanes de tierra alta y cipriera a favor de esta parte en el parafe que indica.

(Signed) MANUEL GAYOS DE LIMOS.

Translation of document A, filed April 16th, 1846, and offered in evidence by plaintiff.

To his Excellency the Governor General:

Don Pedro Marigny, commandant of the volunteer militia of Mississippi, express to your Excellency, that in the district of New Feliciana there are vacant lands, consisting of cypress lands and highlands, which, in times long past, were in the occupancy of the late Fara, without any concession having been previously obtained from this government, and neither before or after, said lands have not been measured. Wherefore, he prays your Excellency will be pleased to grant to him fifteen hundred arpents of said description of lands adjoining those already conceded to Don Antonio Gautier; which favor he hopes to obtain from the well known benevolence of your Excellency.

New Orleans, 7th November, 1798.

(Signed) PEDRO D. MARIGNY.

NEW ORLEANS, *7th November*, 1798.

Don Vincente Pintado, surveyor of the district of Feliciana, will survey the 1,500 arpents of cypress and highlands in favor of this petitioner, and in the place which he designates in his petition.

(Signed) MANUEL GAYOSO DE LEMOS.

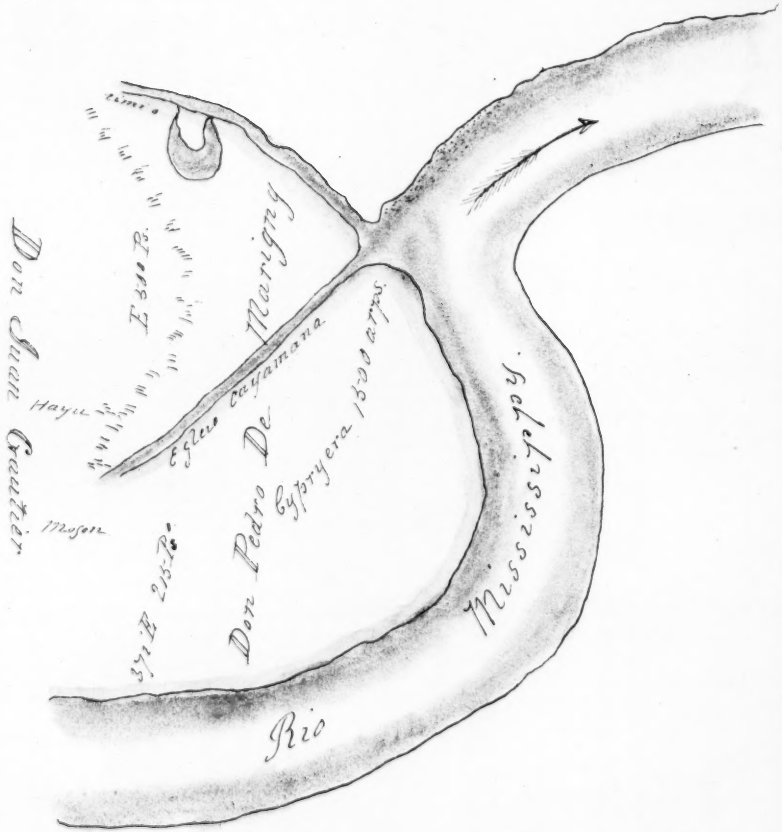
B.

Luisiana, 1799.

Distrito de la Feliciana

Certificado original de Solicitud
Don Pedro Lanuel Villeré de 640 arp.
Marzo 15 1799 en [illegible]
Gobernador Gral. Carondelet

N° 1203—



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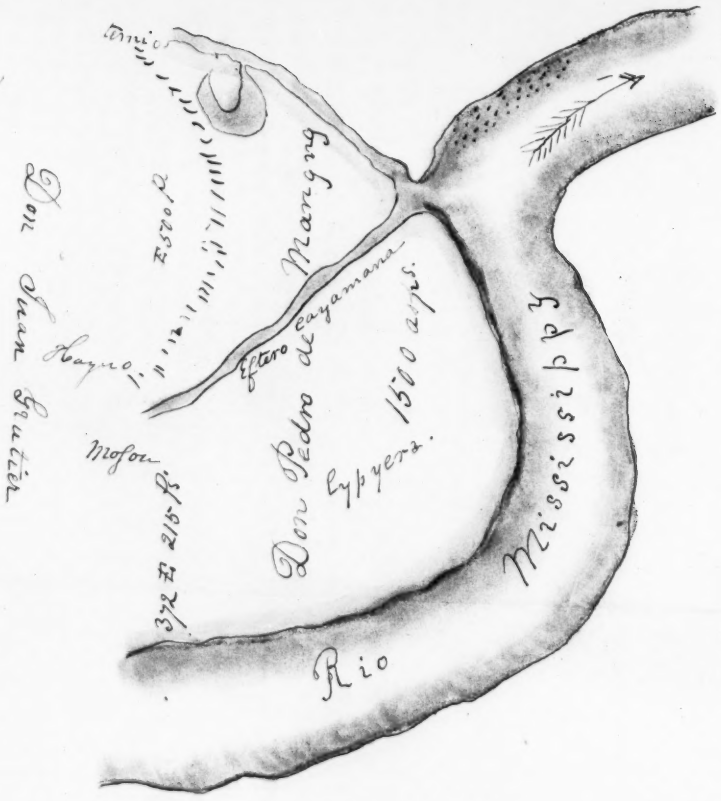
Luisiana, 1799
Distrito de la Feliciana



No 1203

Document B, filed March 28th, 1846, and offered in evidence by plaintiff.

[For plat see original.]

Certified and signed ne varietur, New Orleans, this 2d day of March, 1837.

(Signed) F. M. GUYOL, *Judge*.

Dn. Carlos Trudeau, agrimensor gr'l: Certifico, el presente plano, copiado del original que fue remetido al interesado en fecha premero Febrero, del corriente año de mil setecientos noventa y nueve años. Lindado segun las lineas del plano sin attender á la variacion de la bruxula, variando esto de ocho grados, quince minutas, al N. E.

Fecha et supra.

(Signed) CARLOS TRUDEAU.

Endorsement on the back of document "B."

LAND OFFICE, GREENSBURGH,
March 27th, 1837.

I, John Killian, register of said office, do hereby certify, that the within plat and annexed affidavit are duly recorded in liber E 2, fo. 73 and 74.

In testimony of which I have hereunto set my hand officially.

(Signed) JOHN KILLIAN, *Register*.

Affidavit annexed to document "B."

Before me, one of the associate judges of the city court of New Orleans, this day, personally appeared Thomas Urquhart, of this city, who, being sworn, made oath that the signature of Carlos Trudeau, affixed to the plan and instrument of writing hereunto annexed, and by me signed ne varietur, with the date of this day, is the genuine signature of said Carlos Trudeau, then general surveyor of the country, or of the province of Louisiana; further, this affiant says, he knows that it is the signature of said Carlos Trudeau in the capacity aforesaid, for having seen him sign often said documents, and verily believes he cannot be mistaken nor deceived in saying, as before, that it is the genuine signature of the said Trudeau.

(Signed) THOS. URQUHART.

Sworn to and subscribed before me, this second day of March, 1837.

(Signed) F. M. GUYOL, *Judge*.

And on the 16th of April, 1846, the following translation of document B was filed, and offered in evidence by plaintiff, to wit:

[For plat see original.]

Certified and signed ne varietur, New Orleans, this 2d day of March, 1837.

(Signed) F. M. GUYOL, *Judge*.

Don Carlos Trudeau, surveyor general: I certify, that the above plan is a copy of the original which was given to the interested party on the first of February of the present year 1799; bounded according to the lines of the plan without regard to the variation of the compass, which variation is S degrees 15 minutes to the northeast.

Dated as above.

(Signed) CARLOS TRUDEAU,
Surveyor General.

Document "C," filed March 28th, 1846, and offered in evidence by plaintiff.

Land office, eastern district of Louisiana.

Don Manuel Gayoso de Lemos: Vistas las ante'ndentes diligencias practicadas por el agrimensor de esta provin'a Don Carlos Trudeau, sobre la posecion que ha dado á Don Pedro de Marigny, de la contidad de mil y quinientos arpanes de tierra de superficie, situados en el distrito de la Feliciana, lindando á la parte del Norte, con tierras de Don Juan Gautier, y á las demas partes con las orillas del Rio Mississippi y Feliciana, como lo demuestra, &c. Dado, &c., en la Nueva Orleans, á 10 de Febrero, de 1799.

REGISTER'S OFFICE, *New Orleans.*

I, B. Z. Canonge, register of the land office at New Orleans, do hereby certify the foregoing patented concession to be a true copy taken from the records now in my possession, and forming a part of the archives of this office.

In faith whereof I hereunto subscribe my name, this 9th October, 1835.

Lev. 8, fo. 28, veril.

(Signed) B. Z. CANONGE, *Register.*
By A. LAFFERANDERIE.

Endorsement on the back of document "C."

I certify that the within is duly recorded in my office, in book E, No. 2, at page 2 and 3.

Montpelier, parish of St. Helena, Land office, August 4th, 1836.

(Signed) JOHN KILLIAN, *Register.*

Translation of document "C" filed.

Don Manuel Gayoso de Lemos: Examined the foregoing operations made by the surveyor of this province, Don Carlos Trudeau, in relation to the possession which he has given to Don Pedro de Marigny, of 1,500 superficial arpents of land situated in the district of Feliciana, bounded on the north by lands of Don Juan Gautier, and on the other sides by the banks of the river Mississippi and Feliciana, as shown, &c., &c.

Given in New Orleans, on the 10th of February, 1799.

REGISTER'S OFFICE, *New Orleans.*

I, B. Z. Canonge, register of the land office at New Orleans, do

Property of CCNY

hereby certify the foregoing patented concession to be a true copy taken from the records now in my possession, and forming part of the archives of this office.

In faith whereof I hereunto subscribe my name, this 9th October, 1835.

Pro B. Z. CANONGE, *Register*.
A. LAFFERRANDERIE.

Document D, filed March 28th, 1846, and offered in evidence by plaintiff.

Township 4, range 2, west of the basis meridian, land district east of the Island of New Orleans, and west of Pearl river.

[For map, see original.]

Table of contents.		Quality of the land.
Sec. No.	Contents.	
2	64.00	Poor beach land.
11	153.20	Inundated land.
13	213.30	Second quality beach and bay land.
19	–	Swamp.
20	–	Poor swamp land.
21	–	Inundated swamp land.
22	146.30	Inundated swamp.
23	–	Poor swamp.
24	–	Poor swamp.
27	210.15	Second quality beach and bay land.
30	354.20	Broken beach land.
32	483.20	Broken beach and bay land.
35	48.90	Second quality beach land.
36	336.50	Second quality land.

Claimants' names.	Sec. No.	No.	Contents.
David Ross	1	*	492.10
John Rhea	3	*	190.40
Joseph McNiel	4	*	96.50
Joseph E. Johnson	5	*	694.05
Lorthum Allen	6	H 641	294.70
P. R. Delogney	8	H 641	349.79
Joseph E. Johnson	9	*	573.00
Forbes & Inerarity	10	*	209.40
R. A. Charmichael	12	H 188	390.70
J. G. Carney and C. Raby	14	H 443	240.07
James Railey	15	H 444	268.30
James Railey	16	*	534.80
Joseph E. Johnson	17	*	222.50
Joseph E. Johnson	18	*	902.30
James Londons	29	H 645	182.60
James Railey	25	H 190	552.90
James Railey	26	H 187	657.40
Forbes & Ineiarity	28	*	1092.90
Madam Rowel	31	*	609.30
Richard Sweazy	33	A 4	466.65
Philip Hickey	34	*	483.00
Philip Hickey	36	*	285.70
Philip Hickey	37	*	510.90
Sosthain Allaen	7	H 640	405.00

Signed, ARCHIBALD B. GRAHAM,
Deputy Surveyor.

MOSES RICHARDSON,
CADER SPEAR, *Chain carriers.*

Signed, JAMES P. TURNER,
Principal Dep. Surveyor.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, Nov. 18th, 1836.

The above is a true copy of an approved map of township No. 4, range No. 2 west, land district east of the Island of Orleans, and west of Pearl river, on file in this office.

Signed, H. T. WILLIAMS,
Surveyor General, La.

Document "E," filed March 28th, 1846, and offered in evidence by plaintiff.

[For map, see original.]

In conformity with an order from the United States surveyor general for the State of Louisiana, dated May 10th, 1837, I have resurveyed a tract of land, situated in the district of St. Helena, in the parish of West Feliciana, fronting on the Mississippi river and Thompson's creek, being in township four, of range two, west section, viz: Commenced September 16th, 1837, beach tree on the bank of Thompson's creek, mark with a cross on one side, B on the opposite, M on one side and S on the other, bearing from the stake N. 46¼ E. 14 links a dogwood, B, N. 77 W. 20 links an ash, N. 7 W. 27 links a beach, B, S. 31 W. 32 links; thence, N. 81 20 W. on that line on high land heavily timbered with ash, sycamore, beach, and poplar, at 32, 50 chains came at 37.00 chains come to opposite side; thence, in low swamp land at 115.00 chains cross Alligator bayou at 145.50 chains come to the corner in low swamp, (it was raining too hard to take bearings;) thence, ran N. 63¼ W. 35 chains come to the river, and set a post, from which an oak, B, S. 72½ W. 20 links, another B, N. 32 W. 18, a locust, B, N. 72 E. 12 links; thence, down the margin of the river, with its meanders, S. 12 E. 11.10 chains, S. 2 E. 67.00 chains, S. 5 E. 19.00 chains, S. 32 E. 2.50 chains, S. 18 E. 20 chains, S. 26 E. 16.00 chs, S. 37 E. 72.00 chains, S. 85 E. 25.00 chains, N. 68 E. 72.50 chains, N. 70 E. 9.89 chains, to the mouth of Thompson's creek; thence, up the creek, with its meanders, N. 20 W. 31.50 chains, N. 6 W. 12.00 chains, N. 16 W. 16.50 chains, N. 28 W. 10.00 chains, N. 7 W. 5.00 chains, N. 3 W. 30.00 chains, N. 73 E. 12.50 chains, N. 48 E. 18.00 chains, N. 27½ E. 16.44 chains, to other place of beginning; having such shape, form, and marks, natural and artificial, as represented by above plat, containing 2210 superficial acres.

Signed, W. H. COBB, *Deputy Surveyor.*

JOHN FOREST,
FRANCES COSSMIAS, *Chain carriers.*

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, 6th Nov., 1837.

The above plat and certificate of survey has been examined and compared with the original plat, &c., made by Carlos Trudeau, surveyor general under the Spanish Government, and found to correspond with it, except that this plat represents the present margin of the river.

Signed, H. T. WILLIAMS,
Surveyor General, La.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, 22d Dec., 1837.

The foregoing is a true copy of the original on file in this office.

Signed, H. T. WILLIAMS,
Surveyor General, La.

Document G, filed March 28th, 1846, and offered in evidence by plaintiff.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that this day, before me, William Christy, a notary public in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared Jean Martin Laselve de St. Avid, of this city, herein acting in his capacity of agent and attorney in fact of Madame Marie Celeste de Marigny, of lawful age, wife of François E. de Livaudais, separated in property from her said husband, and now residing in the city of Paris, kingdom of France; the said St. Avid deriving his authority to act in the premises from the annexed letter of attorney, executed by the said Madame de Livaudais, in Paris aforesaid, on the 29th day of September, 1845, who declared, that whereas by an act passed before me, said notary, on the fifth day of June, eighteen hundred and forty-four, Mandeville Marigny, of this city, sold and conveyed to Lewis N. Shelton, also of this city, all his right, title, and interest in and to the one undivided half part of a tract of land, containing fifteen hundred arpents, more or less, situate in the parish of West Feliciana, in this State, in township four south, of range two west, and about six miles below bayou Sara, bounded on the lower side by Thompson's creek, on the west by the Mississippi river, on which it has a front of about three miles; being the same tract which was granted to Pedro de Marigny, grandfather of the said Mandeville Marigny, and father of the said Madame de Livaudais, on the 10th February, 1799, by Gayoso de Lemos, then governor of the Floridas.

And whereas, the said Madame de Livaudais is owner by inheritance from her said father, the said Pedro de Marigny, of the other undivided half part of the said tract of land, and has agreed to convey the same: Now, therefore, the said St. Avid moreover declared, that for the consideration hereinafter expressed, and by virtue of the powers in him vested by the said annexed letter of attorney, he does, by these presents, grant, bargain, sell, and convey, without any warranty whatsoever, except against the acts and deeds of his said constituent, unto the said Lewis N. Shelton, here present, accepting and purchasing for himself, his heirs and assigns, all the right, title, and interest of the said Madame de Livaudais, in and to the one undivided half part of the above described tract of land, together with all and singular the rights of batture and accretion, customs, ways, privileges, servitudes, and appurtenances, unto the said undivided half part belonging, or in anywise appertaining.

To have and to hold the said right, title, and interest, unto the said purchaser, his heirs and assigns, to their own proper use and behoof, forever.

And here the said Shelton declared, that he dispensed with the production of a certificate from the recorder of mortgages for the said parish of West Feliciana, to shew the mortgages, if any, on the said property, and to be annexed to this act, as required by article 3328 of the Civil code of this State.

This sale is made for and in consideration of the sum of fifteen hundred dollars, one thousand dollars of which have been paid in ready money, and for the balance the said purchaser has given his promisso-

ry note for five hundred dollars, drawn to the order of, and endorsed by, Barelli & Co., dated this day, and made payable forty days after date, at the Bank of Louisiana, in this city; the receipt of which note and ready money is hereby acknowledged by the said St. Avid.

And the said St. Avid moreover declared, that he understands the said tract of land was sold for taxes last year, or the year before; now, therefore, it is well understood and agreed by the said parties, that the present purchaser shall reclaim the said land at his own cost and expense, without having, on that account, any claim on Madame de Livaudais.

Thus done and passed in my office, at the said city of New Orleans, in the presence of William G. Latham and Henry Rareshide, witnesses of lawful age, and domiciliated in said city, who hereunto subscribe their names, together with the said parties and me, the said notary, on this second day of February, in the year of our Lord one thousand eight hundred and forty-six.

Original signed: Lewis N. Shelton, Jn. St. Avid, W. G. Latham, H. Rareshide.

WM. CHRISTY, *Not. Pub.*

I certify the above to be a true copy of the original, on file and of record in my office.

In faith whereof I grant these presents, under my signature and seal of office, this third day of February, eighteen [hundred] and forty-six.

WM. CHRISTY, *Not. Pub.*

STATE OF LOUISIANA,
Parish of West Feliciana.

I certify the foregoing to be truly recorded in my office, in book of notorial records "I," pages 205 and 206.

Given under my signature and seal of office, this 23d day of February, 1846.

JAS. J. WEEMS, *Parish judge.*

Doc. F, filed March 28th 1846, and offered in evidence by plaintiffs.

To the Commissioner of the General Land Office:

Sir: I herewith lay before you a part of the documentary evidence in support of the title of Bernard Marigny, a citizen of Louisiana, to a tract of land of fifteen hundred arpents, situated on the Mississippi river and Thompson's creek. This land Mr. Marigny claims by virtue of a concession made to his father, Pedro Marigny, on the 10th February, 1799, by Gayoso de Lemos, the then governor of the Floridas by authority from the crown of Spain. The land in question, is situated in what was then called the district of Feliciana, and now a part of the State of Louisiana. The title papers were regularly recorded in the land office, in the parish of St. Helena, Louisiana, in accordance with the requisition of the act of Congress, passed on the 6th of February, 1835, a copy of which is hereto appended, and particularly referred to, marked [C]. The accompanying original Spanish document, marked

[A] contains the petition of the grantee, Pedro Marigny, and the order of survey by Gayoso de Lemos, in accordance thereto. The accompanying document, marked [B], is the concession, made in regular form in accordance with the survey made by Carlos Trudeau, the surveyor general of the province (agrimensor.)

The boundaries of the land are distinctly given, and the grantee by the concession itself acknowledged to be in possession; (sobre la posesion que ha dado á Don Pedro de Marigny.)

Notwithstanding all these documents have been regularly recorded in the land office, as before stated, the commissioner of the land office sold the said land, as part of the public domain to different individuals, who entered the same at Government price. These individuals are Randolph and Jefferson, in partnership, and Micajah Harris, who have obtained certificates of entries, and of course, will soon have their titles reported for confirmation. To arrest this manifest injustice, Mr. Marigny now respectfully and earnestly solicits the attention of the Commissioner of the General Land Office to the nature of his claim.

He has applied in vain to the commissioners of the land office in St. Helena, and it is to you alone, sir, that he can look for that justice to which he considers himself by every principle of law and equity entitled. It is to you he looks, in common with many others, for a remedy against the encroachments of the avaricious land speculators, who are deluging the southern and western sections of the Union, and disturbing old and established possessors in the enjoyment of their lands.

The action of the commissioners at St. Helena has been hasty and premature. For, admitting that Mr. Marigny had amply given notice of his claim, and requested permission to record the evidence in support of it, without having actually as yet done so, the commissioners could not be justified in disposing of the land claimed by him, until the expiration of the time, distinctly and explicitly allowed by the act of Congress, to record his title papers.

The time allowed him by the act in question will not expire until the lapse of two years from the passage of the act of Congress, of the 6th of February, 1835, which will be on the 6th of February, 1837. The provisions of the act are liberal in favor of claimants, and were intended to be so for wise and obvious reasons, among which may be reckoned the difficulty of procuring the necessary evidence, arising from the change of governments the territory has undergone, and the fact that many of the title papers relating to lands in the now State of Louisiana, were removed by the Spanish authorities of Florida from the ceded country to the Island of Cuba and elsewhere. Now, the commissioners at St. Helena, have not only totally disregarded the provisions of the act of Congress just alluded to, but have not paid due consideration to the Spanish original title papers, actually recorded, before them. Those papers show a complete title in Marigny, as the son and heir of his father Pedro Marigny, the original grantee of the land; but being in a foreign language may not have been intelligible to the commissioners.

It is particularly to be borne in mind, (and it is a fact that should elicit

the attention of the Commissioner of the General Land Office,) that the township plat in which the land in question is situated, by which the commissioners of the land office have been guided in disposing of the land to persons entering the same at Government price, cannot be regarded as a correct and faithful delineation of the said township, inasmuch it has never been approved by the surveyor general of lands south of Tennessee. Of this fact due proof will be given.

With this brief statement of his case, Mr. Marigny most respectfully requests, that the Commissioner of the Genl. Land Office will for the present withhold from the purchasers at Government price their patents to the fifteen hundred arpents of land, so claimed by him, until a proper investigation can be made of the merits of the conflicting titles.

From the great importance of the case to his interests, and to the interests of others similarly situated, he feels assured that this reasonable request will be granted.

He feels confident, if this act of justice is awarded him, that his title to the land in question will be made clear.

All of which is most respectfully submitted.

THEO. H. McCALEB, *for B. Marigny.*

P. S. I beg leave further to inform the commissioner that the tract referred to in the foregoing communication comprises sections 19, 20, 21, 22, 23, and 24, town. 4 south, range 2 west.

Respectfully,

T. H. McCALEB.

GENERAL LAND OFFICE.

I, James Whitcomb, Commissioner of the General Land Office, do hereby certify, that the foregoing on pages 1, 2, 3, and 4, is a true copy of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the said office to be affixed, at the city of Washington, the 19th day of September, 1840.

JAS. WHITCOMB, *Commissioner.*

Doc. "H," filed 16th April, 1846, and offered in evidence by plaintiff.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that this day, before me, William Christy, a notary public, in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned—

Personally came and appeared, Mandeville Marigny, of this city, who declared that, for the consideration hereinafter set forth, he does, by these presents, grant, bargain, sell, and convey, without any warranty whatsoever, except against his own acts and deeds, unto Lewis N. Shelton, also of this city, present, accepting and purchasing for himself, his heirs and assigns, all the right, title, interest, and claim of him, said Marigny, in and to one undivided half part of a tract of land, con-

taining fifteen hundred arpents more or less, situate in the Parish of West Feliciana, in this State, in township four south, of range two west, and about six miles below Bayou Sara, bounded on the lower side by Thompson's creek, and on the west by the Mississippi river, on which it has a front of about three miles, being the same tract which was granted to Pedro de Marigny, the grandfather of the present vendor, on the 10th February, 1799, by Gayoso de Lemos, then governor of the Floridas.

Together with all and singular the rights of batture and accretion, customs, ways, privileges, servitudes, and appurtenances unto the said undivided half part belonging, or in any wise appertaining.

Which said undivided interest was purchased by the present vendor, from his father Bernard Marigny, by an act under private signature, dated 24th January, 1842.

To have and to hold the said rights, titles, interest, and claim, unto the said purchaser, his heirs and assigns, to their own proper use and behoof forever.

And here the said Shelton declared that he dispensed with the production of a certificate from the recorder of mortgages for the said parish of West Feliciana, to shew the mortgages, if any, on the said property, and to be annexed to this act, as required by article 3328 of the Civil code of this State.

This sale is made for and in aonsideration of the sum of two thousand dollars, one thousand dollars of which have been paid in ready money, and for the balance the said purchaser has given his promissory note for the sum of one thousand dollars, drawn to the order of and endorsed by John Randolph, dated this day, and made payable in the Bank of Louisiana, in this city, on the first day of January, eighteen hundred and forty-five; which note, after having been paraphed by me, the said notary, to identify it with this act, was delivered to the said Marigny, who hereby acknowledges the receipt thereof, as well as of the said ready money.

And, in order to secure the punctual payment of the said note, the said purchaser hereby specially mortgages and hypothecates the said undivided half interest to his said vendor, promising and binding himself not to alienate or encumber the same to the prejudice of this mortgage.

It is hereby agreed and understood, by and between the said parties, that the said Marigny's titles to the said property are to remain deposited in the office of me, said notary, or of my successor, until the maturity of the said note; when, if duly paid, they are to be delivered to the said Shelton, and, if not paid, to the said Marigny.

And now personally came and intervened in these presents Madame Sophrone Louisa Claiborne, of lawful age, wife of the said Marigny, who did declare unto me, notary, that it is her wish and intention to release in favor of the said purchaser the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges, to which she is or may be

entitled, whether by virtue of her marriage with her said husband, or otherwise.

Whereupon I, the said notary, did inform the said wife, apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law a legal mortgage on the property of her said husband:

First For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly. For the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected.

Thirdly. For nuptial presents.

Fourthly. For debts by her contracted with her said husband. And—

Fifthly. For the amount of her paraphernal property alienated by her, and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of, and acquainted with, the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law, on the property of her said husband, and that, availing herself of the rights secured to her by the second section of an act passed by the legislature of this State, authorizing wives to make valid renunciations, &c., approved on the twenty-seventh day of March, eighteen hundred and thirty-five, she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges herein before enumerated and described, but all others, of any kind or nature whatever, to which she is or may be entitled, by any laws now or hereafter in force, in the State of Louisiana.

And the said husband being now present, aiding and authorizing his said wife in the execution of these presents, she, the said wife, did again declare that she did, and doth hereby, make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of the said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, at the said city of New Orleans, in the presence of W. G. Latham and H. Rareshide, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this fifth day of June, in the year of our Lord one thousand eight hundred and forty-four.

Original signed—

M. MARIGNY,
SOPHRONIE MARIGNY,
LEWIS N. SHELTON,
W. G. LATHAM,
H. RARESHIDE.

WM. CHRISTY,
Notary Public.

I certify the foregoing to be a true copy of the original on file and of record in my office. In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, on this fifth day of June, in the year of our Lord one thousand eight hundred and forty-four.

WM. CHRISTY, *Not. Pub.*

STATE OF LOUISIANA,
Parish of West Fiticiana:

I, James J. Weems, parish judge of the said parish, do hereby certify the above and within deed and mortgage to be truly recorded in records of notarial acts, book "H," pages 606, 607, 608, and 609, in my office.

Given under my official signature and seal, this 19th day of June, A. D. 1844.

JAS. J. WEEMS,
Parish Judge.

Document I, filed April 16th, 1846, and offered in evidence by plaintiff.

LEWIS N. SHELTON
vs.
THE UNITED STATES.

United States district court, district of Louisiana.

Thursday, April 16th, 1846.

Present, the honorable Theo. H. McCaleb.

Isaac T. Preston, being duly sworn in open court on behalf of the petitioner, deposes as follows:

He has had occasion to examine many titles to property in this country, held under Bernard Marigny and Mrs. Livaudais, and from those examinations, and from public reputation, they are the heirs and the only heirs of Pedro de Marigny.

Edward Lauve, being duly sworn in open court on behalf of the petitioner, deposes as follows:

He knows, from general reputation, that Bernard Marigny and Mrs. Livaudais are the heirs and only heirs of Pedro de Marigny.

Document K, filed April 16th, 1846, and offered in evidence by plaintiff.

LEWIS N. SHELTON
vs.
THE UNITED STATES.

District court of the United States, of Louisiana, for the trial of land claims.

Garrett Jordean, a witness for the plaintiff, being duly sworn, doth depose and say, that he has been a pilot on the Mississippi river, and particularly on the lower Mississippi river, on steamboats, since 1816, and was employed on flat and keel boats since 1809, and has been well acquainted with the banks and courses of the river. He is well ac-

quainted near Bayou Sarah, where he lived several years; he recollects the bank of the river, immediately above Thompson's creek, well twenty-five years ago, and can testify that the bank has made out at that place three quarters of a mile in that period; he recollects particularly landing, in 1820, at that place, at a landing three quarters of a mile behind the present landing. The increase of batture has extended two miles above Thompson's creek, thus greatly increasing the land the whole extent.

(Signed) G. JORDAN.

Sworn to and subscribed before me, this 16th day of April, 1846.

(Signed) N. R. JENNINGS, *Clerk*.

Document L, filed April 16th, 1846, and offered in evidence by plaintiff.

Court of the United States, for the district of Louisiana.

To any judge, or justice of the peace, in and for the parish of West Feliciana, State of Louisiana.

Know ye, that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require that you call, and cause to come before you, John Kemperton, Cyrus Ratcliff, and others, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein Lewis N. Shelton is petitioner, and the United States the respondent; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Hon. Theo. H. McCaleb, judge of said court, at the city of New Orleans, this 11th day of April, anno domini 1846, and the 70th year of the independence of the United States of America.

(Signed) N. R. JENNINGS, *Clerk*.

By L. E. SIMONDS, *Dep. Clerk*.

LEWIS N. SHELTON
vs.
THE UNITED STATES.

Interrogatories to John Kemperton, Cyrus Ratcliff, and others, witnesses residing in the parish of West Feliciana, to be qualified and examined in the above case, under the annexed commission.

1. How old are you, and how long have you resided in West Feliciana, or that part of the country?

2. Are you acquainted with a tract of land called the Marigny tract, on the Mississippi river, near the mouth of Thompson's creek, and how long have you known it?

3. Has or not the Mississippi river changed its course, or banks, at that point, within the last thirty or forty years, and to what extent? Has this change enlarged or diminished the said tract of land, and to what extent?

4. Please to state every thing you know in relation to the change of

the bank of the river at that point, as fully as if particularly interrogated thereto, and also as to the effect it has had on the said tract of land.

(Signed) ISAAC T. PRESTON,
Attorney for plaintiff.

Service accepted, and no cross interrogatories to propound, and consent that a commission issue to any judge or justice of the peace.

March 30th, 1846.

(Signed) S. W. DOWNS,
U. S. attorney, district of Louisiana.

Clerk's office, United States district court, district of Louisiana:

I certify the foregoing to be a true copy of the interrogatories filed herein, to be attached to the annexed commission.

April 11th, 1846.

(Signed) N. R. JENNINGS, *Clerk.*
By L. E. SIMONDS, *Dep. Clerk.*

LEWIS N. SHELTON
vs.
THE UNITED STATES.

Court of the United States, for the district of Louisiana.

In obedience to the annexed commission, issuing from the honorable the court of the United States for the district of Louisiana, in a certain case now depending in the said court, wherein Lewis N. Shelton is petitioner, and the United States is the respondent, I, Henry Hinch, a justice of the peace of the parish of West Feliciana, have, on this 13th day of April, 1846, caused John Kemperlin, a witness on behalf of the petitioner, to come before me, at the residence of said Kemperlin, in the parish of West Feliciana, and having first duly sworn said witness according to law, to make true and correct answers to the annexed interrogatories propounded to him:

1st. To the 1st interrogatory he answers and says, he is seventy-two years of age, and has resided fifty-seven years in West Feliciana, (now called,) formerly Feliciana; has resided in this part of the country since the year 1789.

2d. To the 2d interrogatory he answers and says, he knows the tract of land on the Mississippi river, near the mouth of Thompson's creek, and above the mouth of said creek, but does not know to whom it belongs. Has known said tract of land, more or less, ever since he has been in this country.

3d. To the 3d interrogatory he answers and says, the Mississippi river has changed its bank at that point of land above the mouth of Thompson's creek, on the west side of said creek for at least one mile, running from the mouth of said creek up the river Mississippi as aforesaid, increasing the land in said tract at least one mile. This increase of land to said tract has been making ever since witness has resided in this section of country.

4th. To the 4th interrogatory he answers and says, the bank of the river at that point has changed, as set forth in his answer to third interrogatory. The land has increased at least one mile on the river, at that point, commencing at the mouth of Thompson's creek, and running up the river Mississippi in a westerly direction. The land on the opposite side of Fausse river, witness thinks, that, if any alteration has taken place, it has been decreasing.

(Signed) JOHN KEMPERLING.

Sworn to and subscribed before me, this 13th day of April, 1846.

(Signed) H. HINCH, *Justice of the peace.*

STATE OF LOUISIANA, *Parish of West Feliciana:*

After having reduced to writing the answers of the foregoing witness, John Kemberlin, to the annexed interrogatories and cross interrogatories propounded to him, I read over said answers to said witness, and asked him if they had been correctly written, when he replied that they were; when said witness signed his answers in my presence, after the same had been reduced to writing by me in the presence of said witness. The words " and above the mouth of said creek," in 3d line of second interrogatory, were interlined by me at the request of said witness before signing.

Given under my hand and seal, as justice of the peace, this 13th day of April, 1846.

(Signed) H. HINCH, *Justice of the peace.*

Court of the United States, for the district of Louisiana:

LEWIS N. SHELTON
vs.
THE UNITED STATES.

In obedience to the annexed commission, issued from the honorable the court of the United States for the district of Louisiana, in a certain case now depending in the said court, wherein Lewis N. Shelton is the petitioner, and the United States is the respondent, I, Henry Hinch, a justice of the peace of the parish of West Feliciana, have, on this 13th day of April, 1846, caused Cyrus Ratliff, a witness on behalf of the petitioner, to come before me, at the office of Messrs. Ratliff and Cowgill, in the town of St. Francisville, parish of West Feliciana; and having first duly sworn said witness, according to law, to declare the truth, the whole truth, and nothing but the truth, to the annexed interrogatories propounded to him in said suit:

To the 1st interrogatory he answers and says:

1st. To the 1st interrogatory witness says, he is forty-eight years old; has resided in what is now called West Feliciana all his life, with the exception of three years residence in the parish of Pointe Coupee, about 6 miles above the upper mouth of Fauce river or Waterloo, and about 3 or 4 months in the parish of Iberville; has lived within about three miles of the mouth of Thompson's creek for the last 10 years.

2. To 2d interrogatory witness says, he is not acquainted with the metes and bounds of the particular tract of land spoken of in this interrogatory, but knows where it lies, and is well acquainted with the land generally in the neighborhood, as to its quality, natural boundaries, timber, &c. There has been no material alteration in the land in the neighborhood, with the exception of the accumulation made on the margin of the road from the point opposite or a little below Waterloo, or the upper mouth of Fauce river, to below the mouth of Thompson's creek, near the Port Hudson landing. Since the last thirty or thirty-five years, the land at the mouth of Thompson's creek has extended into the river, by its gradual annual deposites, at least one mile; about half way between the mouth of the creek and the upper end of the bar on the left bank descending, the increase has been much greater; and at the upper end of the bar, opposite or nearly opposite Waterloo, it has not been anything like as much. Like most large bars on the Mississippi river, commencing at a point above and gradually increasing in size and width until about two-thirds down, and then decreasing until it meets the current from the opposite point, returning back from the other shore, in this way forming almost a semicircle. The bend in the river opposite this bar being very considerable, has been measurably the cause of the rapid increase of the deposite on this bar. Large trees have grown up on this bar since witness first knew it, and it now has the appearance of an original forest to a great extent.

3d. To third interrogatory witness says, there has been no other change than those described in witness's answers to second interrogatory, except above the point opposite Waterloo there has been a slight falling in of the bank, not enough to effect any material change in the aspect of the country, or land in the neighborhood. The increase in quantity of the land has been immense for the time; it has added one or two thousand acres of alluvial land to the main soil, since the last 30 or 35 years, to my knowledge.

4th interrogatory. Witness says he knows of no other change or alteration in the Mississippi river at that point, except what he has already stated in his answer to the second interrogatory and third interrogatory. Thompson's creek has, in some places, caved in its banks a little, and some places made a little; but its general course has remained the same, except its extension into where the river then was.

(Signed) CYRUS RATLIFF.

Sworn to and subscribed before me, this 13th day of April, 1846.

(Signed) H. HINCH,
Justice of the peace.

Document M, filed April 16th, 1846, and offered in evidence by plaintiff.

GENERAL LAND OFFICE, *June 20th*, 1837.

GENTLEMEN: It has been represented to this office that B. Marigny, esq., of New Orleans, lodged in the hands of Paris Childreas, receiver

of the land office at St. Helena, for the purpose of being recorded in the records of that office, the title papers to a tract of land claimed by him on the Mississippi river and Thompson's creek, in township 4, of range 2 west; which title papers the receiver omitted to have recorded within the term limited by law, and that subsequently the lands in said tract were permitted to be entered by different individuals at private sale, as you will observe by reference to certificate 582, 726, and 820.

To enable this office to form a correct opinion of the nature of this transaction, I have to request that you report the date when these title papers were lodged with the receiver, and the cause of their not being placed on record within the proper time; and also the evidence that may be on file in your office, going to shew that the sections 19, 20, 21, 23, and 24, within the limits of which this claim is believed to be situated, were ever surveyed, and the contents thereof ascertained and returned to you by the surveyor general.

I am, very respectfully, your obedient servant,

(Signed) JAS. WHITCOMB, *Commiss'r.*

To the Register and Receiver
of the Land Office, Greensburg, Louisiana.

Land Office, *Greensburg, Louisiana,*
October 15*th*, 1840.

I, Richmond Dennis, register of the land office at Greensburg, in the parish of St. Helena, Louisiana, do hereby certify, that the foregoing is a true and correct copy of the original letter now on file in the records of said office.

(Signed) RICHMOND DENNIS, *Register.*

Document N, filed April 16*th*, 1846, *and offered in evidence by plaintiff.*

Land Office, *Greensburg, Louisiana,*
September 13*th*, 1837.

Sir: Yours of the 20th of June last has been received, in which you request I should report the date when B. Marigny, of New Orleans, lodged with the receiver title papers to a tract of land on the Mississippi, at the mouth of Thompson's creek, in township 4 south, of range 2 west, which are stated to have been withheld by the receiver from record until the term limited by law had expired, and the land had been permitted to be entered by different individuals. I had no knowledge of the title papers being in the hands of the receiver. On the 4th day of August, 1836, was presented by Thos. McCaleb, agent of B. Marigny, the petition of P. Marigny, and order of survey by Manuel G. de Lemos, and certificate of B. Z. Canonge, register of New Orleans, and of C. Trudeau, certificate of having surveyed and put said P. Marigny in possession of land on the Mississippi river, at Thompson's creek, which was recorded on that day in book E, No. 2, pages 1, 2, and 3. Some time after Mr. Miscal presented, for Mr. B. Marigny, a plat and certificate of survey of same by Carlos Trudeau, which is now on rec-

ord, same book, page 73. On inquiry of the receiver, he informed me that Mr. B. Marigny had deposited in his possession said title papers, except the plat and certificate of survey, long before the office was open to receive neglected claims. Mr. Marigny informed the receiver that the land was situate at bayou Sara, and wished the assistance of the receiver to get the land confirmed by a special act of Congress, and that the papers were taken out of the hands of the receiver by B. Marigny.

The only and last evidence I have on file in my office, to show that sections Nos. 19, 20, 21, and 24, were surveyed and returned to this office, is, that I have on file township map 4, south of range No. 2 west, containing those sections, signed by A. B. Graham, deputy surveyor, and James S. Turner, principal deputy surveyor, on the 12th of April, 1827, and endorsed on the back, (this offered for sale, Monday 15th, 1830, signed Paris Childress, clerk;) see proclamation of President of U. S., of 1830, for the sale of public lands in this district.

I have the honor to be, your obedient servant,

(Signed) JOHN KILLIAN, *Register*.

To James Whitcomb, Esq.,
Commiss'r Gen. Land Office, Washington city, D. C.

U. S. Land Office, *Register's Office*.

I, Richmond Dennis, register of the land office at Greensburg, Louisiana, do certify the foregoing is a true copy of the original letter now on file in this office, this the 15th day of October, 1840.

(Signed) RICHMOND DENNIS, *Register*.

Thursday, *April 16th*, 1846.

Present: The Hon. Theo. H. McCaleb.

Lewis N. Shelton, vs. The United States. } No. 12.

This cause came on for trial this day, I. T. Preston, esq., appearing for the petitioner, and the U. S. district attorney for the respondent. Evidence was heard on behalf of the petitioner; none being offered on the part of the respondent. And after considering said evidence, the court being of the opinion that the allegations of the petition have been fully established, doth now order, adjudge, and decree, that the title of the petitioner is good and valid against the United States, in and to the following tract of land, to wit, the tract situated in township four, (4,) range two (2) west, in the land district east of the island of New Orleans, and west of Pearl river, in the parish of West Feliciana, bounded on the west and south by the Mississippi river, on the east by Thompson's creek, and on the north or upper side by a line dividing it from a tract granted to Don Juan Gautier, and run from a beach tree on the bank of Thompson's creek, marked with a cross on one side, B on the opposite side, M on one side, and S on the other, across Horse Shoe lake and Alligator bayou, north eighty-one and a quarter (81¼) degrees

west, one hundred and forty-five (145) chains; thence north sixty-three and a quarter ($63\frac{1}{4}$) degrees west, thirty-five (35) chains to the Mississippi river; thence down the river to the mouth of Thompson's creek; and thence up the said creek to the place of beginning, according to a survey made by Wm. H. Cobb, deputy surveyor of the United States, on the 16th of September, 1837, and approved by H. T. Williams, surveyor general of the United States, on the 6th of November, 1837, by which survey the tract contained twenty-two hundred and ten (2,210) superficial acres; and the petitioner is further entitled to all the increase by alluvion, since or hereafter to be made. And it is further ordered and decreed, that the petitioner is entitled to a patent for said tract of land. And it is further ordered, that the petitioner pay the costs of this suit.

Judgment rendered, April 16th, 1846.

Judgment signed, April 23d, 1846.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And on the 5th of November, 1846, the following petition for an appeal from the foregoing judgment was filed by U. S. district attorney.

In the district court of the United States, for the district of Louisiana.

LEWIS N. SHELTON,
vs.
THE UNITED STATES.

The petition of the United States respectfully shows, that it is believed there is error in the judgment rendered against them in this honorable court, on the twenty-third day of April, 1846, in the matter of Lewis N. Shelton vs. The United States.

Wherefore they pray that your honor may be pleased to allow an appeal to be taken from said judgment to the Supreme Court of the United States.

(Signed) THOMAS J. DURANT,
Attorney U. S.

Let this petition be filed, and an appeal granted as prayed for.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Let the said appeal be returnable on the 2d Monday of February, 1847.

(Signed) THEO. H. McCALEB,
U. S. Judge.

And on the 13th day of February, A. D. 1847, a motion extending the return day of this appeal was entered on the minutes, and is in the words and figures following, to wit:

SATURDAY, *February* 13*th*, 1847.

Present: Hon. T. H. McCaleb.

LEWIS N. SHELTON, vs. THE UNITED STATES. } No. 12.

Upon motion of Thomas J. Durant, U. States district attorney, that in the land cause numbered 12, and entitled as above, an appeal has been granted from the judgment rendered therein to the Supreme Court of the United States, at Washington, and that the said appeal has been made returnable during the present session of the Supreme Court, and not on the first day of said term as the practice generally is; to the end that said case of appeal might have its chance of being tried during the present session; and, as no object will be gained by issuing citation to the appellee directing him to appear at any other time than on the first day of the said term of said court, it is therefore ordered, that the order upon the petition of appeal in said cause be so amended as to make it returnable on or before the commencement of the next annual session of the Supreme Court.

Clerk's office, United States district court, in and for the district of Louisiana.

I, Needler R. Jennings, clerk of the court aforesaid, do hereby certify the foregoing fifty pages, and two plans, to contain a true and complete transcript of the record in the case of Lewis N. Shelton versus The United States of America, number 12, on the docket of the said court, embracing the pleadings and orders of court, as well as all the testimony adduced by the parties on the hearing of the said cause, from the original record on file in my office.

In testimony whereof I have hereunto signed my name and caused to be affixed the seal of the said court, at New Orleans, [SEAL.] this 23rd day of October, in the year of our Lord one thousand eight hundred and forty-seven, and the seventy-second year of the independence of America.

N. R. JENNINGS, *Clerk*.

I, Theodore Howard McCaleb, judge of the United States district court for the district of Louisiana, do hereby certify, that Needler R. Jennings, who signed the above certificate, was at the time of so signing his name, and is now, the clerk of the United States district court for the district of Louisiana, that faith and credit are due and ought to be given to his attestations as such, and that the above certificate is in due form of law.

In testimony whereof I have hereunto signed my name and affixed my seal, this 25th day of October, in the year of our Lord one thousand eight hundred and forty-seven, and the 72d year of the American independence.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

United States district court, for the district of Louisiana, to Lewis N. Shelton, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States of America, to be holden at Washington city on the first Monday of December next, pursuant to an order of appeal granted on the thirteenth day of February, 1847, by the district judge of the United States for the district of Louisiana, in a certain suit wherein you are plaintiff and the United States are defendants, to show cause, if any there be, why the decree rendered on the sixteenth day of April, 1846, against the said appellants, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, at New Orleans, this fourteenth day of August, A. D. 1847.

THEO. H. McCALEB, *U. S. Judge.*

Marshal's return.

Received, August 27th, 1847; and on the same day served a copy of the above citation on Isaac T. Preston, in person, at New Orleans.

WM. SHEARER, *Dy. U. S. Marshal.*

Received, August 27th, 1847; and on the same day served a copy of the within citation on Isaac T. Preston, in person, at New Orleans.

WM. SHEARER, *Dy. U. S. Marshal.*

Filed 15th November, 1847.